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PART II

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PRETREATMENT STANDARDS FOR EXISTING AND NEW SOURCES OF POLLUTION

Proposed Regulations

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 128, 403]

[FRL 614-4]

PRETREATMENT STANDARDS FOR EXISTING SOURCES AND NEW SOURCES OF POLLUTION

Proposed Regulations

Notice is hereby given that the Administrator of the Environmental Protection Agency (EPA) intends to issue regulations setting up mechanisms and procedures for controlling the introduction of industrial wastes into publicly-owned treatment works (POTW's). The preamble to these general pretreatment regulations would set forth EPA's overall policy for the establishment and enforcement of pretreatment requirements. These regulations would be issued pursuant to sections 208, 301(b)(1)(A)(ii), and (b)(2)(A)(ii), 307 (b) and (c), 308, 402(b) (8) and (9) and 501(a) of the Federal Water Pollution Control Act as amended (Pub. L. 92-500) and would apply to existing and new industrial users of POTW's. It is intended that these regulations would replace the existing general pretreatment regulation, 40 CFR Part 128, which would be rescinded upon promulgation of these regulations.

This notice sets forth four proposed options reflecting various approaches to establishing and enforcing pretreatment requirements. These options differ primarily in terms of the extent to which industrial users of POTW's would be controlled by Federally-promulgated technology-based standards vs. locally-developed and applied pretreatment limits and the extent to which the EPA and those States delegated responsibility for the National Pollutant Discharge Elimination System (NPDES) vs. municipal agencies would have the primary responsibility for enforcement of applicable pretreatment requirements. Additionally, the options differ in terms of the type of local pretreatment programs which would be encouraged and/or approved in the next few years and beyond. It is the Administrator's intention not only to receive written comments on these proposed options but also to hold public hearings in four locations in order to provide the greatest opportunity for public involvement in this rulemaking. Certain major issues on which public comment is specifically invited are identified in a later section of this preamble. It is anticipated that the Agency will select one of these options, or a modification thereof, for promulgation in the FEDERAL REGISTER after public comment.

BACKGROUND

Prior to initiating this proposal the Agency reviewed the available data on both indirect industrial dischargers (industrial users of POTW's) and POTW's. This effort was useful in providing a perspective on pretreatment including the scope of the program, the environmental problems caused by industrial users of POTW's, and the institutional capabilities for handling these problems. Some highlights of this review are discussed below. A more detailed summary is provided in "Information for Proposed General Pretreatment Regulations (40 CFR Part 403)" which is available upon request.

A. SCOPE OF THE PROGRAM

In an effort to focus the analysis, EPA concentrated on 21 industries believed to be dischargnig the pollutants of greatest environmental concern. These 21 industries are under consideration by the Agency for national pretreatment standards pursuant to a settlement agreement between EPA and the Natural Resources Defense Council (NRDC), Environmental Defense Fund (EDF), and Citizens For A Better Environment filed in the U.S. District Court for the District of Columbia. This settlement agreement will also be referred to as the "NRDC/EDF consent decree." Some or all of these 21 industries are the ones considered for national pretreatment standards in the four proposed options. Included in these 21 industries are 8 industries for which pretreatment standards have been or will be developed by EPA for promulgation this year pursuant to the NRDC/EDF consent decree. These 21 industries are listed below and the 8 industries are identified with an asterisk (*).

Automatic and Other Laundries
Coal Mining
Electroplating*
Inorganic Chemicals Manufacturing*
Iron and and Steel Manufacturing
Leather Tanning and Finishing*
Machinery and Mechanical Products Manufacturing
Miscellaneous Chemicals Manufacturing
Nonferrous Metals Manufacturing*
Ore Mining
Organic Chemicals Manufacturing
Paint and Ink Formulation and Printing
Paving and Roofing Materials
Petroleum Refining*
Plastic and Synthetic Materials Manufacturing
Pulp and Paperboard Mills and Converted Paper Products
Rubber Processing
Soap and Detergent Manufacturing
Steam Electric Power Plants*
Textile Mills*
Timber Products Processing*

A more detailed list of specific industrial subcategories, identified by four-digit SIC number, is also contained in "Information for Proposed General Pretreatment Regulations (40 CFR Part 403)" and will be provided upon request.

There are at least 50-55,000 existing industrial dischargers to POTW's in all 21 industries. Approximately 17-20,000 of these indirect dischargers exist in the 8 industries for which national standards will be established this year. The electroplating industry represents the majority of these indirect dischargers with current estimates ranging from 12-15,000. The remaining 13 industries contain an estimated additional 32,000(+) dischargers to POTW's. In addition, tens of thousands of other industrial dischargers to POTW's who are potentially subject to pretreatment requirements were not considered since they are not classified in these 21 industries. Furthermore, a large, but unknown, number of future industrial facilities can be expected to dispose of their waterborne wastes through POTW's.

Most of these industrial facilities discharge to approximately 3-12,000 of the nation's POTW's (out of a total population of 23,000). The majority of POTW's consist of either primary or secondary treatment; however, an estimated 900-1000 POTW's are classified as tertiary (generally physical-chemical) treatment systems. Although the number of POTW's receiving industrial wastes has not been correlated to the data on types of treatment systems, it is expected that many physical-chemical POTW's were designed for and actually receive substantial amounts of industrial pollutants.

B. ENVIRONMENTAL SIGNIFICANCE OF INDUSTRIAL DISCHARGES TO POTW'S

Industrial dischargers to POTW's are known to be the source of significant environmental problems. These discharges contain varying quantities of the complete spectrum of industrial pollutants, many of which are incompatible with (interfere or pass through) the typical POTW. When these pollutants enter POTW's they generally can create three types of problems which in turn can prevent POTW's from meeting their NPDES permit requirements and can interfere with the attainment of water quality standards:

(i) The most immediate impact of these pollutants is on the operation of the POTW (interference). Slug discharges and high concentrations of certain pollutants can inhibit or interfere with the proper operation of a POTW, thus causing it to do an inadequate job of treating normal domestic wastes as well as industrial wastes.

(ii) Additionally, many industrial pollutants can contribute significantly to the sludge disposal problems of POTW's. Industrial pollutants, particularly metals and toxic pollutants, can limit the sludge disposal alternatives available to the POTW and thus increase the cost of adequate sludge disposal facilities. Furthermore, in some cases, improper handling of metals and/or toxic-contaminated sludges can result in uptake of metals by crops in the human food chain or leaching of these pollutants into ground water (currently the source of approximately 50% of the nation's drinking water) as well as surface waters.

(iii) Even when the inhibition/interference and sludge disposal problems mentioned above have been dealt with, there still are many pollutants that do not receive adequate treatment in most POTW's (passthrough). These pollutants pass through POTW's in quantities and concentrations that may be harmful to the environment and that would be unacceptable under national, State, and local regulations dealing with direct industrial dischargers.

To make this problem more complicated, POTW's exhibit extreme variability in the treatment of industrial wastes. The first type of variability oc-

curs because industrial facilities discharge to different types of POTW's (e.g., secondary biological, biological with chemical addition, or tertiary treatment). The data show that different types of POTW's remove substantially different amounts of some incompatible pollutants. There is on the average at least 10 percent removal in secondary biological systems (based on data on a number of heavy metals) while at least 35 percent of these metals are removed in biological systems with chemical addition. Looking specifically at nickel, for example, on the average 10 percent of this metal is removed by a secondary biological system while an average of 62 percent is removed in a biological system with chemical addition.

The second type of variability occurs because different removal efficiencies are experienced by any given type of POTW. For example, for the same group of heavy metals, average removals in different secondary biological systems (of the same basic treatment configuration) vary from 10 to 70 percent (from 35 to 80 percent for biological systems with chemical addition). This variation is primarily due to daily changes in influent concentrations and to differences in acclimation, synergistic/antagonistic effects, and plant operation.

C. Institutional Capabilities

A nationwide pretreatment program requiring compliance by up to 20,000 dischargers in 1980 and potentially as many as 55,000 by 1983 requires that government develop the capabilities to implement a major pollution control effort. To date, EPA, several States, and a significant number of local governments have initiated pretreatment programs. So far, the development in EPA of the capability to establish and enforce pretreatment standards has been limited and constrained by available resources. At least 6 States have pretreatment programs and several others are considering establishing programs. There are a large, but unknown, number of local governments with pretreatment programs. The majority of these municipal programs are concerned about interference with POTW operations. Only a few municipal programs are also designed to control the pass-through of pollutants to receiving waters; most of these are in areas where water quality standards have been established on incompatible pollutants.

Some States have established POTW effluent limits and/or water quality standards for incompatible pollutants and recommended them to EPA for inclusion in NPDES permits or included them in State-issued requirements or permits. However, only half the States and territories have established numeric water quality criteria for some of the most common incompatible pollutants on one or more segments of their navigable waters. As a result, very few POTW's discharge to streams where water quality standards for incompatible pollutants apply and have effluent limits based on these water quality standards in their permits.

In summary, current institutional capability to implement the pretreatment program is poorly developed. It is estimated that it would take several years for significant numbers of State and local governments to develop the capability to assume enforcement responsibilities.

Statutory/Legal Considerations

In addition to the above data gathering and analysis EPA also reviewed the Federal Water Pollution Control Act Amendments of 1972 (FWPCAA or Pub. L. 92–500), 33 U.S.C. Section 1251 et. seq., and its legislative history.

A. General Statutory Considerations

The Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to as "the Act") were designed by Congress to achieve an important objective—to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Primary emphasis for attainment of this goal is placed upon technology-based regulations. Industrial point sources which discharge into navigable waters must achieve limitations based on Best Practicable Control Technology Currently Available (BPT) by July 1, 1977 and Best Available Technology Economically Achievable (BAT) by July 1, 1983 in accordance with sections 301(b) and 304 (b). New sources must comply with New Source Performance Standards (NSPS) based on Best Available Demonstrated Control Technology (BDT) under section 306. Publicly owned treatment works (POTW's) must meet "secondary treatment" by 1977 and Best Practicable Waste Treatment Technology (BPWTT) by 1983 in accordance with sections 301 (b), 304(d) and 201(g)(2)(A). Users of a POTW also fall within the statutory scheme as set out in section 301(b). Such sources must comply with pretreatment standards promulgated pursuant to section 307.

B. Legal Authority

Sections 307 (b) and (c) are the key sections of the Act in terms of pretreatment. Section 307(b) requires the Administrator to promulgate regulations establishing pretreatment standards for the introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Pretreatment standards promulgated under section 307(b) shall be established to prevent the discharge of any pollutant through treatment works which are publicly owned which pollutant interferes with, passes through, or otherwise is incompatible with such works.

Section 307(c) provides that the Administrator shall promulgate pretreatment standards for any source which would be a new source subject to section 306 if it were to discharge pollutants to navigable waters, simultaneously with the promulgation of standards of performance under section 306 for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

Objective of the Pretreatment Program

Based on this review and analysis the Agency believes that the objective of the pretreatment program is to prevent those problems caused by industrial pollutants in POTW's: inhibition/interference with the POTW operation and inadequate treatment of many pollutants by industry and POTW's prior to their release to the environment. These two concerns are consistent with the objectives spelled out in the language and history of the Act. Specifically, the Act identifies two objectives for pretreatment:

(i) Prevent the introduction of pollutants into POTW's which will interfere with the operation of those POTW's; and

(ii) Prevent the introduction of pollutants into POTW's which will pass through the treatment works or otherwise be incompatible with such works.

In developing and implementing a pretreatment strategy the Agency intends to interpret these objectives broadly. The Agency will consider the effects of industrial wastes on the municipal sewer system and the disposal of sludge containing industrial pollutants as well as the direct impacts of industrial pollutants on water quality. For example, the Agency will be concerned about the sludge disposal problems of both POW's and industry including the transfer of pollutants to other media (e.g., air, ground water, etc.) With respect to sludge disposal, the Agency will be looking for compliance with Sections 201 (d) and (e), 208(b)(2) (J) and (K) and 405 of the Act and any guidelines issued thereunder as well as any hazardous waste disposal guidelines or regulations issued pursuant to the Resources Conservation and Recovery Act of 1976 (P. L. 94–580). Such a broad focus is consistent with the pretreatment provisions of the Act as well as the legislative history and other statutory authorities.

Objectives of a National Pretreatment Strategy

Given the above objectives and the complexity of the pretreatment problem the Agency has determined that an overall pretreatment strategy should be developed and outlined to the public. This approach should provide the framework for clean-up of industrial discharges through POTW's and delineate the various responsibilities and deadlines applicable to each party involved in this clean-up—i.e. EPA, States, municipal agencies, and industry. Hopefully, development of this strategy will minimize confusion over the Agency's intended actions in the coming years regarding pretreatment, fill in several gaps in EPA's previous efforts (e.g., enforcement and permit policies, etc.), will result in

better coordination among municipal and industrial water pollution control programs (particularly as they relate to industrial discharge to POTW's), and will provide a consistent and equitable approach nationwide toward indirect dischargers.

A secondary objective of developing a national pretreatment strategy is to begin to reconcile existing pretreatment programs in many cities with the approach called for by the Federal legislation. Pretreatment programs which are fair and equitable, cost-effective, and successful in reducing industrial discharges through POTW's and into the nation's waterways must be developed. This will require the dedication of resources as well as public and political support at the municipal, State, and national level.

The primary vehicle for developing and explaining the Agency's overall approach toward industrial users of POTW's will be this revision of the general pretreatment regulations.

These regulations, 40 CFR Part 403, will supersede the present general pretreatment regulation, 40 CFR Part 128. Certain aspects of Part 128 have proven difficult to understand and apply. In particular, the concepts of compatibility and incompatibility and the credits provision of § 128.133 needed further development. The new Part 403 regulation should accomplish these goals and provide a more workable framework for pretreatment.

Both new and existing users of a POTW will be covered by these regulations and subject to its provisions. These pretreatment requirements will apply to users of a POTW as defined in section 212 of the Act. This definition does not depend on whether or not the publicly owned facility is federally funded. In other words, users of a publicly owned but non-federally funded POTW must also comply with Federal pretreatment standards. Moreover, although section 301(b) contemplates that pretreatment requirements will apply to users of a POTW which meet the standards for a POTW set out in sections 304(d)(1) and 201(g)(2)(A), the fact that a POTW may not be in compliance with the provisions of the Act will not relieve users of the POTW of their own obligations to comply with national pretreatment standards.

Four Strategy Options

This notice proposes four pretreatment strategy options or general approaches to controlling effluent discharges from indirect industrial sources (industrial users of POTW's) for public consideration and discussion. All four options are discussed in detail below. For the purpose of illustrating how these options would be translated into regulatory language, proposed regulatory provisions for Option I have been included. Only Option I was translated into regulatory language in an effort to conserve space; however, it must be emphasized that this in no way implies any preference on the Agency's part for Option I. Any necessary changes to the proposed regulatory provisions representing Option I [i.e., §§ 403.7, 403.8, 403.9, 403.10, 403.11, and § 403.12(b) and (c)] due to the selection of Option II, III, or IV are explained below along with the discussion of each option. Also, it should be noted that "local authorities" as discussed throughout this preamble is equivalent to "municipal agencies" as defined in the proposed regulatory provisions. Similarly, "local compliance program" and "local pretreatment program" as discussed in this preamble are analogous to "municipal pretreatment program" as specified in 40 CFR Part 403.

There are a number of major variables in designing a national pretreatment program. These major variables include the basis for pretreatment requirements (i.e., water quality-based *vs.* technology-based), the type of national requirements (i.e., standards *vs.* guidance), and the governmental body charged with primary responsibility for enforcement of applicable requirements (Federal and State governments *vs.* local authorities).

The Agency believes that the full spectrum of potential options has been included in this notice. Within the constraints of the Act and keeping in mind the implications of the legislative history, EPA has attempted to develop options that accurately reflect the opinions and desires of various interest groups who have previously responded on the pretreatment issue. The options also have been designed to be as internally consistent as possible.

All four strategy options attempt to achieve the statutory objectives of preventing interference and pass-through; however, the options differ in terms of how they reach those objectives. For example, the options differ in terms of the number and type of pollutants and sources that would be covered by national standards—that is, in terms of how far the Agency would go down a prioritized list of critical pollutants (e.g., toxics, metals, other incompatibles, etc.) and how many sources of each pollutant within an industry would be regulated by national technology-based standards (e.g., all sources, 95 percent of all sources, major sources only, etc.).

The options also differ in terms of the type of local pretreatment programs which EPA would support and encourage in the next three to four years (while national standards are being developed) and in the longer term. In the short term, depending upon the option chosen, EPA would encourage (through Federal guidance and grants) local pretreatment programs based either on water quality standards, State-developed POTW effluent limits, industrial technology-based limits, existing municipal pretreatment programs, or all of the above. Along this line, the options also differ with respect to the time period for which local programs could be based on water quality standards for incompatible pollutants or, in the absence of water quality standards, 304(a) criteria (e.g., indefinitely or only for the next three to four years) and the sewage treatment plant's burden of proof in obtaining approval of variances and, thus, the local pretreatment program.

In addition, the options differ in the placement of responsibility for achieving compliance with applicable pretreatment requirements. Depending upon the option selected, primary responsibility for pretreatment compliance programs, including issuance of notices to industrial dischargers, compliance reviews and monitoring, and enforcement actions against violators, would lie with different governmental bodies (i.e. Federal and NPDES State governments or local authorities, including general and special purpose units of local government). This means that violations of applicable standards may be prosecuted in different courts with potentially different penalties.

As with all proposals there is the potential for some modification of each of the options discussed below. The final regulation could incorporate aspects of any or all of the options presented. For this reason, the public is invited and encouraged to comment on each option, particularly on the major issues outlined below; however, comments on other aspects of the options also are encouraged. Further, it has been brought to the Agency's attention by some public respondents in discussions of the pretreatment problem as the strategies were being developed that some of the options may not be entirely consistent with the Act or the NRDC/EDF consent decree. The Agency is also to public comments on this issue.

Elements Common to All Options

Before considering the four options in detail, it is useful to note that a number of elements are common to all four strategies. These common elements are discussed below and are included in all the options under consideration.

Additionally, a number of the proposed regulatory provisions are common to all four options, specifically §§ 403.1, 403.2, 403.3, 403.4, 403.5, 403.6, 403.12 [except (b) and (c)] and 403.13. These provisions would remain essentially the same no matter which option is selected and are discussed here along with the common strategy elements. These specific proposed regulatory provisions are provided below.

A. Federal Standards on Prohibited Wastes

In all four options, the Agency would establish two sets of pretreatment standards under the authority of sections 307 (b) and (c). The first set is contained in these general pretreatment regulations, 40 CFR Part 403. These Part 403 standards, as specified in § 403.4, prohibit the discharge of certain pollutants by any user of a POTW which would substantially interfere with the operation of the POTW. These standards, known as "prohibited discharge" standards, are designed to prevent inhibition or interference with the municipal treatment works by prohibiting the discharge of pollutants of such nature or quantity that the mechanical or hydraulic integrity of the

POTW is endangered. This includes prohibiting pollutants which create a fire or explosion hazard, discharges with a pH lower than 5.0, solid or viscous pollutants which obstruct the flow in a sewer system, slug discharges (volume or concentration) which upset the treatment process and result in loss of treatment efficiency, and heat in such quantities that the POTW's influent water exceeds 40° C. These prohibitions apply to all users of POTW's whether or not a user is subject to other national and/or local pretreatment requirements.

Most of these prohibited discharge standards are identical or similar to the prohibitions contained in the existing general pretreatment regulation, 40 CFR Part 128. Specifically, § 403.4(a), (b), (c), (d), and (e) are similar to § 128.131. A few minor language changes have been made in these prohibitions, particularly the slug discharge prohibitions, but the intent and requirements are the same. Since these requirements are the same and since the deadline for compliance with § 128.131 has passed, no lapse in compliance with these requirements would be allowed.

This regulation also prohibits heat in quantities sufficient to inhibit biological activity in a treatment system. In most cases, heat in fairly substantial quantities can be discharged into a municipal sewage system along with waste water without causing an upset or other difficulty in operating the POTW. As a matter of fact, some heat, particularly in cold weather, may prove to be beneficial and may accelerate the effectiveness of the treatment process. However, POTW's include biological treatment systems whose performance can be affected adversely if an excess of heat is found in the treatment plant itself. Hence, some safeguard is needed to prevent an excess of heat being discharged to the treatment plant while still allowing lesser amounts of heat to be discharged to and dissipated in a POTW. The point of damage to biological activity in the POTW is considered to be 40° C (104° F); and, thus, this regulation, as specified in § 403.4(f), prohibits heat in such quantities that the influent waters to the POTW exceed 40° C. Since this is an additional requirement not contained in § 128.131, compliance with this provision would be required within one year of the date of promulgation of 40 CFR Part 403.

B. FEDERAL STANDARDS FOR CATEGORIES OF SOURCES

The Agency would establish a second set of pretreatment standards under the authority of sections 307 (b) and (c). Provision for this second set of categorical pretreatment standards is contained in § 403.5 of these general pretreatment regulations. These pretreatment standards would apply to existing and new sources in specific industrial subcategories and would be established in the industrial subpart regulations of 40 CFR Chapter I, Subchapter N. These standards would contain numeric limitations based upon available technologies and POTW inhibition/interference considerations.

Section 301 of the Act anticipates that pretreatment standards for existing sources would be established and compliance would be required before July 1, 1977 while section 307(b) species "a time for compliance not to exceed three years from the date of promulgation" of the standard. Pretreatment standards for most industrial categories have not yet been promulgated. Therefore, the Agency believes that the compliance deadline as set forth in section 307(b) would apply and the time for compliance with each categorical pretreatment standard would be specified in the industrial subpart regulations when promulgated.

C. COVERAGE OF INDUSTRIES

In all four options, the 21 industries discussed above (see BACKGROUND) are candidates for national numeric pretreatment standards. Depending upon the option selected, national standards would be established for all 21 industries or for more or less than the 21 industries. Where national standards are not established the options anticipate that appropriate local standards would be developed and implemented.

The 21 industries were selected on the basis of enviornmental significance, particularly for direct discharges, and are included in the NRDC/EDF consent decree. Under this consent decree, the Agency is obligated to (i) develop 1983 direct discharge (BAT) standards pursuant to sections 301 and 304(b)(2) for the 21 industries by December 1979, (ii) establish pretreatment standards pursuant to section 307 (b) and (c) for the 8 industries identified above (see BACKGROUND) before June 1977, and (iii) develop, as appropriate, pretreatment standards for the remaining 13 industries as well as revised standards for the first 8 industries.

From the above discussion it can be seen that two efforts, promulgation of the 8 industry standards and development of the overall pretreatment strategy, as represented by these proposed general pretreatment regulations, are proceeding concurrently. The Agency recognizes that some revisions to the first 8 pretreatment standards promulgated pursuant to the NRDC/EDF consent decree may be needed once the general policy has been determined and established. These revisions should not be significant since the standard-setting process is essentially the same under all four options (see discussion below), although the coverage of industries varies to some extent in the options. The pretreatment standards promulgated prior to the promulgation of these general pretreatment regulations will be reviewed for consistency with the final strategy at the time of promulgation of 40 CFR 403.

Although the Agency would develop numeric pretreatment standards for up to 21 or more industries under the various options, new information obtained as the standards are developed could always result in some additions, deletions, or changes to the original industries selected. In all four options the following criteria would be followed in determining some deletions; however, standards might be promulgated for other industries in their place. Under these criteria, pretreatment standards would be established for an industry unless (i) the majority of pollutants discharged to POTW's or (ii) the amount and toxicity of such wastes are not significant enough to justify an expenditure of resources at the national level for development of the regulation. This latter criteria may result in excluding those industries where there are not or very few dischargers to POTW's. These criteria are similar to the NRDC/EDF consent decree which states that pretreatment standards would be established for all 21 industries unless the Agency determined during its examination of an industry either that (i) at least 95 percent or more of the existing indirect dischargers in the industry introduce only pollutants which are susceptible to treatment or do not interfere or are not otherwise incompatible with such treatment works, or that (ii) the amount and toxicity of pollutants which do interfere, pass through, or are otherwise incompatible with the treatment works taken together is not significant enough to justify development of a pretreatment regulation.

D. CONTROL OF TOXICS

In all four options EPA would establish national technology-based standards under the authority of sections 307(b) and (c) to regulate, at a minimum, the most toxic and hazardous pollutants. In developing these national standards EPA would consider the need to regulate some or all of those pollutants contained on a list of the 65 highest priority toxic pollutants and found in the effluent from indirect industrial dischargers.

The 65 toxic pollutants were selected based on a review of available data on the 232 pollutants of greatest environmental concern. These 65 toxic pollutants are contained in the NRDC/EDF consent decree and include:

(i) Substances for which there is substantial evidence of carcinogenicity, mutagenicity and/or teratogenicity;

(ii) Substances which are structurally similar to the above compounds or for which there is some evidence of carcinogenicity, mutagenicity or teratogenicity; and

(iii) Substances which are known to have toxic effects on human or aquatic organisms at sufficiently high concentration and are present in industrial effluents.

The list of 65 toxic pollutants is also included in "Information for Proposed General Pretreatment Regulations (40 CFR Part 403)."

Although the list of toxic pollutants which are candidates for national standards would be the same in all four options, it should be noted that some additions, deletions, or changes to this list

could be made as the Agency develops additional information. The Agency currently has an effort underway to develop an integrated strategy for dealing with toxic pollutants found in air, water, and on land. Some modifications to the list of 65 toxic pollutants could result from this effort. And, in all four options, some deletions from the list could be made if it is determined from the information obtained in developing national standards that the pollutant is: (i) not present in the discharge, (ii) present only in trace amounts, or (iii) present solely as a result of its presence in the industry's intake waters. Criteria for any further deletions from the list of 65 toxic pollutants are discussed along with the discussion of specific options.

E. STANDARD-SETTING PROCESS

The criteria for the establishment of numeric pretreatment standards under the authority of sections 307 (b) and (c) would be essentially the same in all four options. The options vary in the degree to which the Agency would apply these criteria to industries and pollutants.

In determining numeric pretreatment standards the initial step is to classify the pollutants discharged by an industrial user of a POTW in terms of the statutory criteria of interference, pass-through, or other incompatible effects. These pollutants will fall, generally, into two classes. The first class is composed of those pollutants which are similar, in all material respects, to the pollutants which are found in municipal sewage and which the POTW is "designed" to treat. In general, these "compatible pollutants or parameters" include biochemical oxygen demand (BOD) and suspended solids (SS) (see the Secondary Treatment Regulation, 40 CFR Part 133). No pretreatment would be required for compatible pollutants.

The second class contains those pollutants which require pretreatment in order to prevent interference with the POTW or pass-through of the pollutant or other incompatibility. Some or all of these "incompatible pollutants" would be subject to numeric pretreatment standards based on the limits of technology and the ability of POTW's to treat them. As discussed previously, these numeric pretreatment limitations would be set forth for specific industrial subcategories.

To be more specific regarding incompatible pollutants, some other materials besides BOD and SS can be treated effectively in small concentrations in a POTW but cannot be treated effectively when the concentrations exceed the system's tolerance levels. Regulation of these types of materials would be aimed at reducing the concentrations to a level that the POTW can effectively treat while preventing the introduction of these pollutants at concentrations that would pass through untreated or interfere with the treatment effectiveness of the POTW. Materials of this type currently under consideration by the Agency include oil and grease of a mineral origin, ammonia, phenol, and cyanide, etc. Limitations on these pollutants would be based on the levels at which inhibition or interference with the POTW can be prevented and would tend to be similar regardless of the industrial subcategories being regulated.

On the other hand, some pollutants are considered incompatible because they simply are not effectively treated by a POTW regardless of the influent concentrations. These pollutants, when controlled by national standards, would generally be limited to the maximum extent technically and economically feasible. In some cases, consideration of POTW removal capabilities and sludge disposal problems would also be taken into acocunt in determining the level of technology on which to base the standard (see discusion below).

Many of the pollutants of greatest environmental concern from indirect dischargers (e.g., metals and chemicals) are included in the 65 pollutants discussed earlier—e.g., copper, lead, zinc, cadmium, cyanide, etc. However, the Agency would not be limited to these 65 substances. Depending upon the option selected, other identified incompatibles may be regulated also.

In determining that a specific substance is incompatible some assumption must be made regarding the type of POTW being used. The Agency, because it is developing national standards, will assume that the POTW is a secondary biological treatment works. Although a number of the remaining POTW's are primary treatment at this time, these POTW's are required under the Act to achieve secondary treatment. Additionally of the 23,000+ POTW's in the nation, only 900–1000 are classified as being tertiary treatment systems. Each of the options would have a variance provision for these tertiary or physical-chemical treatment systems.

To be more specific regarding this assumption, EPA would assume that the POTW is one of a group or family of biologic treatment processes which are commonly used in the treatment of normal municipal sewage and which are designed to achieve the secondary treatment standards as established in 40 CFR 133 and as required by the Act. The secondary treatment standards generally require that a sewage treatment plant, in addition to controlling pH, reduce the amount of five-day biochemical oxygen demand (BOD 5) to 85 percent or less of the influent value or to 30 mg/l in the discharge, whichever is the more stringent. A similar restriction is applied to suspended solids.

There are a variety of sewage treatment plant systems which, when properly designed and operated, meet secondary treatment requirements on a consistent basis. These designs include the activated sludge system and its modifications, trickling filters, and oxidation ponds. There are a number of activated sludge system modifications which incorporate variations on the amount of sludge recirculation, the amount of air or oxygen supplied to the aeration tanks, the use of pre- and post-chlorination, and the use of sludge digestion, sludge combustion, or land filling as mechanisms for disposal of the sludge generated. The retention time of sewage in such systems generally is short; it is normally considered to be six hours with retention times as short as three to four hours not uncommon. Trickling filters are often used when savings in power and operator attention are needed. Oxidation ponds can be used where the necessary land area is available and the long retention times required by such lagoons or ponds can be achieved. POTW's which have regular, substantial chemical addition for the purpose of removing materials other than BOD and SS would not be included in this group of sewage treatment systems assumed by EPA in developing national standards.

The numeric pretreatment limitations on incompatible pollutants would be technology-based using a rationale similar to that used by the Agency in establishing direct discharge standards (BPT, BAT, and NSPS). These pretreatment standards would be based upon the best effluent control technologies or techniques for a given industrial subcategory, taking into account technical and economic constraints (e.g., space limitations, economic impacts, etc.).

Pretreatment standards for existing indirect dischargers established under the authority of section 307(b) would be based upon the degree of effluent reduction attainable through the application of the best effluent control technologies. These standards could be called "appropriate pretreatment technology" (APT) standards and would be based on the best pretreatment technologies or on the application of treatment techniques, process and procedure innovations, operating methods, and other alternatives. In establishing these APT standards, the Agency would take into account such factors as the cost of achieving these limits, the age of equipment and industrial facilities involved. the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impacts, and any other factors the Administrator deems appropriate. In some cases, consideration of these factors may result in the establishment of different limitations within an industrial subcategory.

The Agency would also consider the economic impact of its regulations before establishing numeric pretreatment standards. In determining economic impact, the cost of municipal waste treatment including the charges imposed by a POTW on industry (user charges, surcharges and industrial cost recovery etc.) would be assumed as part of the baseline cost for an indirect discharger. The incremental cost of appropriate pretreatment technologies or process changes would then be examined to determine if significant impacts in terms of price effects, potential plant closings, and unemployment, etc. would result from implementation of the standard. As with

the technical factors considered, this analysis may result in separate industrial subcategories with different standards being established.

Existing source pretreatment standards derived on the basis of the above analyses may be as stringent as BAT standards for direct dischargers. However, the Agency expects that these standards would not be equivalent to either BPT or BAT standards for direct dischargers but may fall somewhere inbetween. In dealing with toxic pollutants, however, it is anticipated that the Agency would generally establish pretreatment standards that are close to BAT standards for these pollutants.

Numeric pretreatment standards for new sources established pursuant to section 307(c) of the Act—i.e., new source pretreatment standards (NSPT) would be analogous to New Source Performance Standards. These standards would be based upon the "degree of effluent reduction * * * achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives * * *" [see section 306(a)(1)]. In establishing these NSPT standards the Agency would take into account the cost, economic, energy, and non-water quality environmental impacts of these regulations.

Further, in developing these APT and NSPT standards the Agency would consider at least three other factors not taken into account in establishing effluent limitations on direct dischargers: (i) inhibition and interference effects of certain pollutants on the POTW, (ii) the POTW's ability to remove specified pollutants, and (iii) the sludge disposal problems of POTW's (see Sludge considerations below). Consideration would be given to inhibition/interference with the POTW's operation and POTW removal efficiencies in determining both the compatibility/incompatibility of pollutants and the level of technology upon which to base the national standards. These considerations could result in adjustments at the national level to the limits determined on the basis of technical and economic feasibility.

Thus, the compatibility/incompatibility of a pollutant could be determined on the basis of the criteria discussed previously as well as the extent to which it is consistently removed by the POTW and would not cause sludge disposal or other problems for by the POTW. For example, if 80 or 90 percent of a pollutant is consistently removed in the POTW, it might be considered compatible even though that pollutant is not controlled by secondary treatment regulations. However, given the extreme variability in removals experienced by most secondary treatment systems, EPA would be conservative in its assumptions regarding POTW removal capabilities.

Further, the Agency would consider not only technical and economic factors but also those factors relating to the treatability in or effect on the POTW of certain pollutants in determining the control technologies assumed as the basis for the national standards. In some cases, consideration of POTW removal capabilities in combination with potential economic impacts, absence of sludge disposal problems, and other factors could result in a less stringent national standard.

National pretreatment standards and Federal guidance would be expressed in terms of concentration limitations; however, an attempt would be made to provide equivalent mass limits in a way that would allow local enforcement authorities to choose between the two. The major reasons for using concentration limits include the ease of enforcing such limits (by EPA, States or local authorities) and the Agency's desire to implement the pretreatment program as quickly as possible. However, dilution may be a problem with some pollutants. This problem may be prevented by a prohibition on dilution, inspection of pretreatment and industrial facilities, and enforcement of the equivalent mass limitations in those cases where dilution is encountered and is of concern.

These concentration standards would be applied at the individual process unit. It is anticipated that the rationale for the derivation of the pollutant concentration standards would be described in detail and the equivalent mass limit for each pollutant provided in the preamble or the supporting documentation to the industrial subcategory regulations. This information would be made available so that mass limitations may be applied either by mutual agreement of the discharger and the POTW or by State and local authorities, if they desire and have authority to do so, in implementing a pretreatment program, provided such State or local limits are "not in conflict" with Federal standards (see sections 307(b)(4) of the Act and § 403.3 below). State and local authorities would be encouraged to enforce mass limitations whenever necessary.

In addition, restrictions and constraints against water use and dilution may be included when appropriate in each subpart. Any such prohibitions against dilution would apply at the point of introduction into the municipal sewer system (as opposed to allowing dilution within the sewer system which at least one of the options contemplates).

F. INDUSTRIAL VARIANCE

Variations from the promulgated pretreatment standards for existing sources may be necessary in certain circumstances to compensate for factors not adequately considered in establishing the numeric limitations. This has been recognized in the establishment of effluent limitation guidelines for direct dischargers and is equally applicable to pretreatment standards. Thus, an industrial variance for existing indirect dischargers analogous to the BPT variance for direct dischargers is included in this proposed regulation (see § 403.6).

In the preparation of the supporting documentation (development document) for pretreatment standards all of the information which the Agency can amass concerning processes and procedures related to the industrial subcategory is collected and analyzed. It is possible, however, that certain facts do not become available to the Agency and cannot be employed in decisions related to the pollutants which may be discharged from a particular industrial operation. For this reason, a variance clause is provided which would allow existing sources which are users of a POTW to apply for an adjustment (either more or less stringent) to the numeric pretreatment standard when factors relating to the industrial user fundamentally different from those considered in promulgating the national pretreatment standard justify the establishment of a significantly different pretreatment limitation. The factors to be considered in granting such a variance include the raw materials used, equipment, facilities, processes employed, nonwater quality environmental impact, and cost of application of pretreatment technologies. The economic/financial capability of the firm would not be considered in granting this variance. Such a variance would be granted only with the approval of EPA.

G. POTW VARIANCE

A variance would also be provided in all four options for case-by-case modifications of the national pretreatment standards for pollutant removals achieved by, at a minimum, fundamentally different municipal treatment systems (i.e., physical-chemical systems). This variance provision would allow publicly owned treatment works to apply for an adjustment (either more or less stringent) to the numeric pretreatment standards when factors relating to the POTW fundamentally different from those considered in establishing the national pretreatment standards justify significant differences in discharge requirements for industrial contributors to that POTW. This variance would apply only in those cases where a POTW could be shown to be fundamentally different from the secondary biological treatment systems assumed in establishing the national standards. The factors considered in determining whether or not the POTW is fundamentally different would include but not be limited to the treatment configuration of the POTW, whether the POTW was "designed" to remove the pollutant, and pollutant removal data from the sepcific POTW. Fundamentally different POTW's would primarily include physical-chemical treatment systems.

While all of the options provide for such case-by-case modifications of the national standards for fundamentally different POTW's, this variance would be effectuated differently under the various options. In Options I, II, and III the POTW variance is combined as part of a variance for all types of pollutant removals while in Option IV this variance provision would stand alone.

H. SLUDGE CONSIDERATIONS

All four options provide for consideration of the POTW's and industry's sludge disposal problems to the extent

feasible at the national level. In establishing national pretreatment standards it is difficult to assume a sludge disposal or utilization method for POTW's, particularly since available data show that 25 percent of the POTW sludge is utilized on land for animal and human food crops, 25 percent is disposed of in landfill areas, 35 percent through incineration, and 15 percent through ocean dumping. Further, the Agency believes that the choice of a sludge disposal method should be a local decision based upon the alternatives available in that specific area. For these reasons, no single sludge disposal or utilization method would be assumed in developing national standards. However, consideration of hazardous pollutants in municipal sludges and the ability of pretreatment standards to reduce the quantity of these pollutants, particularly bioaccumulative toxics, may be a factor in establishing stringent national standards for these pollutants.

On the other hand, in all of the options under consideration a showing by the POTW of adequate sludge disposal facilities would be required before any variances or modifications of the national standards would be approved. Case-by-case modifications of national standards could potentially result in some additional incompatible pollutants in the POTW's sludge. For this reason, a POTW's justification for variances would need to include a showing of environmentally adequate sludge disposal or utilization. In part, adequate sludge disposal would be defined in accordance with any standards and guidelines issued by the Agency under Subpart C of the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580). It should also be noted that regulations under this legislation may require industrial and municipal facilities to obtain a permit for the disposal of sludge containing hazardous pollutants. Thus, it is expected that sludge disposal problems will be of increasing concern to the Agency and others not only with respect to pretreatment but with respect to all environmental matters.

I. SECTION 304(f) GUIDANCE

In all four options EPA would issue guidance under the authority of section 304(f) of the Act to POTW's and States on, at a minimum, other significant industries not regulated by national standards. However, the options differ in terms of the type of recommended standards and whether industries to be regulated by national standards would be included. In all of the options this guidance would include: (i) model ordinances; (ii) recommended level of staffing for POTW's and States; (iii) procedures for inspection, monitoring, and enforcement activities; and (iv) an explanation of the technical/economic factors to be considered in establishing local limits.

J. CONFERENCES AND ASSISTANCE

After the promulgation of these general pretreatment regulations (40 CFR Part 403), EPA along with other interested groups would conduct a series of conferences and seminars to explain the pretreatment program. These conferences would discuss the purpose, nature, and problems to be encountered in developing local pretreatment programs. Additionally, EPA would provide technical assistance to States and POTW's.

K. INCENTIVES THROUGH SECTIONS 201 AND 208

In all four options EPA would use Federal grants and the authority of sections 201 and 208 of the Act to encourage the development of local pretreatment programs. Briefly, this would include: (i) providing Federal monies under the authority of section 201 and encouraging the use of section 208 monies to fund 75 percent of local program development costs; (ii) requiring that the user charge system, in combination with other revenue sources available to the POTW, be adequate to fund the operating costs of an existing local pretreatment program; and (iii) permitting a construction grantee to retain more than 10 percent of industrial cost recovery payments to use for any purpose if he develops an approvable pretreatment program.

Section 201 construction grants would be used wherever appropriate to provide financial aid for the development of a local pretreatment program. These funds might be provided along with grants for development of a treatment works or they could be provided, in some cases, solely for the development of a local pretreatment program. Section 208 grants would be provided in other cases to fund the development of local pretreatment programs as well as to coordinate the local programs in a geographical area.

The Agency recognizes that in many cases POTW's may be the best equipped to develop the technical aspects of a local pretreatment program, particularly the data and analyses for variances. In such cases, 208 planning agencies may be encouraged to channel some of their 208 funds directly to POTW's for development of specific parts of the local pretreatment program. State and areawide 208 planning agencies would also be encouraged to coordinate the various local programs in a geographical area to insure that issues such as economic growth, land use, and sludge disposal are adequately considered and to insure that significant inequities between local programs in the area and their impact on indirect industrial dischargers do not result.

Also, EPA would propose an amendment to the construction grant regulations (40 CFR Part 35) to require that an approvable pretreatment program be developed (in accordance with these proposed general pretreatment regulations) as a condition of any Step 1, 2, or 3 construction grant award in areas of significant industry where the Regional Administrator determines that the 208 work plan does not adequately provide for the development of an approvable pretreatment program. Payment of up to 10 percent of the Step 3 grant amount could be withheld by EPA in accordance with 40 CFR 30.615–3 until the grantee has received approval of the pretreatment program. The details of applying this incentive would vary to some extent among the four options and will be determined upon selection of an option py the Agency and proposal of the amendment to 40 CFR Part 35.

In cases where the 208 work plan does not provide for section 208 funds for the development of an approvable pretreatment program, Step 1, 2, or 3 construction grants would be made for 75 percent of the following pretreatment program development costs:

(i) Developing an inventory of industrial and commercial wastes being introduced into the treatment works;

(i) Determining removals of pollutants in the treatment works;

(iii) Designing a monitoring enforcement program;

(iv) Determining the treatment work's tolerance to pollutants which interfere with its operation;

(v) Determining the technical information necessary to support development of an industrial waste ordinance;

(vi) Purchase of equipment necessary to monitor industrial wastes; and

(vii) Construction of facilities necessary to monitor industrial wastes.

In cases where the 208 work plan does provide for the development of an approvable pretreatment program, 208 grants would be made available to fund the pretreatment program development costs listed in items (i) through (v) above.

Section 201 grants for construction of a treatment works cannot be approved unless the grantee has adopted or will adopt a system of user charges for waste treatment services provided by the grantee and has the financial capability to insure adequate operation of the treatment works (Section 204(b)(1)). In its approval of a user charge system, the Agency would require under 40 CFR 35.935–13(b)(4) that the system, in combination with other revenue sources available to the POTW, result in the collection of adequate funds to operate an effective pretreatment program. Construction grant regulations prohibit payment of more than 80 percent of the Step 3 grant amount unless the Regional Administrator has approved the user charge system (40 CFR 35.935–13(a)).

Section 204(b) of the Act requires that the grantee recover the Federal share of the cost of construction of treatment works to treat industrial wastes from industrial users. EPA's regulations at 40 CFR 35.928–2(b) permit the grantee to use 10 percent of the amounts recovered from industry for any purpose. The Agency would propose an amendment to the regulations which would increase this percentage if the grantee has an approved local pretreatment program. Suggestions are invited on the amount of increase that should be permitted.

L. LOCAL COMPLIANCE PROGRAMS

In all four options the Agency would encourage local compliance programs. Local authorities operate the POTW's which are a vital part of the overall effort to clean up the nation's waterways,

and, thus, are sensitive to and directly affected by the pretreatment program. They are closest to the problem and are already frequently involved in related areas such as regulation of sewers and collection of user charges. Moreover, a local role in pretreatment enforcement is consistent with the partnership of Federal and local effort found in the construction grant program and other parts of the Act.

A local compliance program would be defined to include at least the following elements: (i) legal authority to implement the program, (ii) an industrial waste ordinance, bilateral contract, joint powers agreement, permit, license, or other agreement with the user of the POTW's or those parties (including independent sewer authorities) responsible for the industrial discharges, (iii) an enforcement program, and (iv) resources to implement the program. The enforcement program should provide for notifying industrial dischargers, compliance reviews and monitoring, and enforcement procedures for cases where violation of pretreatment requirements occur (including compliance orders and legal actions, when necessary).

Any local authority, including any person, board, body, agency or other entity having jurisdiction over the indirect discharges to and from a publicly owned treatment works could develop such a local compliance program. The Agency would encourage these local compliance programs through, at a minimum, the 201 and 208 incentives described above. The options differ, however, in the extent to which they provide additional incentives and flexibility to local authorities to encourage the development of these local programs.

M. DIRECT FEDERAL ENFORCEMENT

The Act plainly provides for direct Federal enforcement of pretreatment standards. The operation of a source in violation of pretreatment standards is unlawful under section 307(d) and the enforcement mechanisms of section 309 are available to the Agency to prevent or punish such unlawful behavior.

In all the options there would be some direct Federal enforcement against indirect dischargers and/or against the municipal authorities where violations of the POTW's permit occurs. Requirements under section 402 of the Act, 1983 POTW permits, and monitoring and reporting requirements (see discussions below) would be used to ensure compliance with pretreatment standards and to reinforce Federal enforcement efforts. However, the extent and emphasis of Federal enforcement efforts differs in the four options.

N. SECTION 402 REQUIREMENTS

Under section 402 of the Act, NPDES States are required to have adequate authority to ensure compliance with pretreatment and to require POTW's through their permits to furnish certain information on indirect industrial dischargers. Section 402(b) of the Act requires States with NPDES permit-issuing authority to have adequate authority "to issue permits which apply, and insure compliance with, any applicable requirements of (section) * * * 307 * * *" and "to insure that any user of any publicly owned treatment works will comply with sections 204(b), 307, and 308." In fact, the Senate Public Works Committee stated in its report that it "expects the Administrator to approve State programs which have adequate pretreatment requirements in order to reduce Federal involvement in this area to an absolute minimum." (S. Report No. 92-414, p. 61). These requirements of section 402 are currently in effect and approved NPDES States have complied with them. Failure of NPDES States to continue to comply could result in withdrawal of the NPDES program approval.

Furthermore, section 402(b)(8) provides an additional means of obtaining information for the purpose of operating a successful pretreatment program. Section 402(b)(8) applies to States with NPDES authority and, through section 402(a)(3), to EPA when it is issuing NPDES permits. It provides that permits issued under section 402 to a POTW must require that the POTW furnish the permitting authority with certain information. This information concerns new introductions of pollutants by new users, new introductions of pollutants by existing sources, and changes in volume or character of pollutants being introduced by any source which was using the POTW when the treatment works received its permit. Data to be provided by this section includes the quantity and quality of POTW influent and the impact upon the quantity or quality of POTW effluent. Moreover, logic dictates that in order to evaluate changes in the pollutant quantity and quality into and out of a POTW, information must also be transmitted to the permitting authority giving appropriate baseline data. As stated by the Conference Committee, "the conferees agree, in section 402(b)(8), that each municipal waste treatment plant permit must identify any industrial users and the quality and quantity of effluents introduced by them." (H. Report No. 92-1465 p. 130. See also 40 CFR 124.45(d) and 125.26(b).) Failure of a POTW to comply with these conditions of its permit could result in the issuance of enforcement orders and prosecution of municipal authorities for violations of the permit.

O. RELATIONSHIP OF PRETREATMENT AND SECONDARY TREATMENT STANDARDS

The Agency believes that the requirements for industrial users of POTW's established pursuant to section 307(b) and (c) of the Act and the standards for POTW's pursuant to sections 301 and 304(a)(1) are separate requirements designed to be achieved concurrently. These sections of the Act will be implemented independently. Indirect industrial dischargers must comply with applicable pretreatment requirements even though the POTW receiving the discharge has not yet complied with secondary treatment standards or other more stringent effluent limitations established in an NPDES permit. Conversely, the POTW must comply with secondary treatment standards or other more stringent limitations even though industries discharging to it have not met pretreatment standards.

P. 1983 POTW PERMIT REQUIREMENTS

In all the options under consideration POTW permits for 1983 issued by EPA and the NPDES States would require local pretreatment programs as part of the definition of "Best Practicable Waste Treatment Technology." POTW's must meet secondary treatment standards, as established in 40 CFR Part 133, by 1977 and Best Practicable Waste Treatment Technology (BPWTT) standards by 1983 in accordance with sections 301(b), 304(d) and 201(g)(2)(A). The Agency will define Best Practicable Waste Treatment Technology for POTW's to include a local program for achieving industrial compliance with applicable pretreatment requirements.

Q. MONITORING AND REPORTING REQUIREMENTS

EPA would use the authority of section 308 and 402(b) to establish a self-reporting system to verify the achievement of national pretreatment standards. Under the proposed monitoring and reporting system (see § 403.12 below), indirect sources would be defined in the industrial subpart regulations of 40 CFR Chapter I, Subchapter N to be either "major contributing industry" (MCI) dischargers or "non-major contributing industry" (non-MCI) dischargers. Each MCI for which a national pretreatment standard is established would be required to report its plans and progress toward compliance with the applicable pretreatment standards. Once compliance was achieved MCI's would be required to report to the POTW and EPA (or the NPDES State) at quarterly intervals thereafter indicating that it was, in fact, complying with the pretreatment standards. Industrial facilities which are not defined as a major contributing industry (non-MCI's) but for which a pretreatment standard is established in a subpart of 40 CFR Chapter I, Subchapter N would also be required to report their plans and progress toward compliance with pretreatment standards. Once compliance has been achieved, "non-MCI's" would be required to report at six month intervals indicating compliance with applicable pretreatment standards.

I. LOCAL ENFORCEMENT OF TECHNOLOGY STANDARDS

This section discusses a pretreatment strategy which combines national technology-based standards for 21 industries with local pretreatment programs for enforcement of those standards. EPA would promulgate national pretreatment standards for 8 industries this year and for up to 21 industries, as appropriate, (including revisions of the first 8) within the next three years. These standards would be based on appropriate pretreatment technologies (APT) for existing

sources and new source pretreatment technologies (NSPT) for new sources and would take into account POTW removal capabilities and inhibition/interference considerations. Modifications of the national standards or variances for additional POTW removals (designed and incidental) would be allowed provided the local authority justifies those modifications on the basis of POTW specific removal data and implements a pretreatment program. These variances would be granted wherever the POTW consistently removes a specified pollutant to a greater degree than assumed in establishing the national standard. The variance would be granted to the extent of the additional removal. Federal standards would apply to all indirect dischargers in regulated industries except where POTW specific modifications of the national standards are approved.

This option emphasizes locally-developed and implemented pretreatment programs. These programs would be encouraged through the additional allowances for POTW removals, sections 201 and 208 incentives, and reductions in reporting requirements for POTW's with approved pretreatment programs and/or their indirect dischargers. EPA would enforce the national standards directly against industry where there are no local programs, where State or local authorities request Federal back-up, or where the State or local authority fails to enforce.

Option I is based on the premise that State and local authorities are closer to the problems and, thus, are better able to implement the pretreatment program and that Federal efforts should supplement State and local activities in this area. This is consistent with the stated intent of Congress as shown in the Senate Report:

> The Committee also expects the Administrator to approve State programs which have adequate pretreatment requirements in order to reduce Federal involvement in this area to an absolute minimum. (S. Report No. 92-414 p. 61).

This option would also provide national standards for industries while preventing redundancies in treatment through allowances for specific POTW removal capabilities, as emphasized in the House Report:

> It is not intended that private pre-treatment facilities be required as a substitute for adequate municipal treatment works. (H. Report No. 92-911 p. 113).

Furthermore, the opportunity for modification of the national standards and local assumption of enforcement responsibilities is consistent with EPA's policy of encouraging decentralization and with the Administration's efforts to increase flexibility in regulations.

Regulations which would implement this strategy are proposed below, particularly §§ 403.7 through 403.11 of 40 CFR Part 403.

A. PRETREATMENT STANDARDS AND GUIDANCE

Although the previous discussion dealt with many aspects of the standard-setting process, this section will attempt to refine those criteria as they would be applied in this option. The discussion covers the industries to be regulated by national standards, the coverage of pollutants, the type and coverage of guidance, short-term local technology-based programs, and compliance.

(1) *Coverage of industries.* In Option I national technology-based pretreatment standards would be focused on a large number of the more significant industries and would be established in two groups. National standards would be promulgated for 8 industries before June 1977 and for 21 industries (including the first 8), as appropriate, by December 31, 1979. The industries included in these two groups are identified above in the BACKGROUND section of this preamble. Under this option, pretreatment standards would be established for most, if not all, of the 21 industries unless the majority of the pollutants discharged by an industry are compatible or the amount and toxicity of such wastes are not significant (see discussion of criteria for exclusion in ELEMENTS COMMON TO ALL OPTIONS).

Subpart regulations containing pretreatment standards for the first 8 industries would be promulgated separately this year. Within the next three years these 8 industry standards would be reviewed for consistency with these general pretreatment regulations (40 CFR 403) and for any necessary revisions, including the control of toxic pollutants (see below), and standards for the remaining 13 industries would be developed. Pretreatment regulations for these remaining 13 industries and the revisions to the first 8 industries would be promulgated at the same time and in the same subpart as the revised Best Available Technology (BAT) direct discharge standards for these industries. These regulations would be issued between March 31, 1979 and December 31, 1979. Thus, this option would provide equity in terms of regulatory coverage between direct and indirect dischargers in these 21 industries, although not necessarily equity in terms of the limitations and, thus, cost of application of technologies.

In general, these national pretreatment standards would apply to 95 percent of the indirect sources in each industry (based on numbers of sources or volume of pollutants discharged). In a few cases, however, the Agency recognizes that an expenditure of Federal resources to develop and enforce pretreatment standards may not be justified given the lack of environmental significance of the discharges, the potential for significant economic impact, or other factors. On the basis of currently available data only 3 of the 21 industries would be considered in this manner—i.e., the electroplating, laundries, and machinery industries. In the other 18 industries, Federal standards would be applied to 95 percent of the existing industrial users of POTW's.

(2) *Coverage of pollutants.* In Option I, national technology-based standards for the first 8 and then the 21 industries would limit most common incompatible pollutants and the standards for the 21 industries would also focus on the list of 65 toxic pollutants. Pretreatment standards for the first 8 and then the 21 industries would regulate most metals, some chemicals, and any other incompatible pollutants such as oil and grease, etc. Additionally, the 21-industry standards would limit any of the 65 toxic pollutants found in significant amounts in the effluent from indirect sources within these industries. The Agency would focus considerable attention and resources on determining the presence of these 65 toxic pollutants and regulating them where present in significant amounts. This coverage of toxic pollutants for the 21 industries is consistent with the NRDC/EDF consent decree.

(3) *Short-term local programs.* In the short-term EPA would encourage locally-developed and implemented standards based upon available technologies and POTW inhibition/interference considerations. Local authorities would be encouraged to establish local technology-based limits in industrial waste ordinances and/or bilateral contracts, etc. while national standards are being developed. The 304(f) guidance document (discussed below), 201 and 208 funds for the development of local pretreatment programs, conditions on final payment of step 3 construction grants, and 1983 POTW permit requirements would all be used to encourage these local programs.

(4) *304(f) Guidance.* To assist State and local authorities in developing local programs the 304(f) guidance document would include those items described above (see Elements Common To All Options). Only those industries with significant effluent discharges from indirect sources (on the basis of quantity or quality of effluents) and for which Federal standards would not be established would be discussed in the guidance document.

(5) *Compliance.* In Option I compliance with national pretreatment standards (with or without case-by-case modifications for POTW removal capabilities) for existing and new sources would be required by July 1, 1980 or within three years of promulgation of the standard pursuant to sections 307(b) and (c) of the Act, whichever is longer. Shorter compliance deadlines (e.g., one year) may be established where feasible or where substantial risk to human health or the environment may result from delays in compliance. Further, it is anticipated that compliance with new source pretreatment standards may be required immediately or within six months of promulgation of the standards once approved local programs have been established. The Agency believes that July 1, 1980 or within three years after promulgation of an industry-specific pretreatment standard is the maximum time that can be allowed for compliance given the constraints of the Act and the fact that local programs could be developed in 18–24 months (providing State enabling legislation is not required) and would be approved by EPA or the NPDES States in 90–180 days.

B. MODIFICATIONS OF NATIONAL STANDARDS (LOCAL CREDITS)

Option I would include a variance provision to allow modifications of the national standards for designed and incidental POTW pollutant removals (local credits) if the local authority submits a program, approved by EPA or an NPDES State that: (i) justifies those modifications on the basis of POTW specific removal data, adequate sludge disposal methods, and compliance with applicable effluent limitations, and (ii) implements a local compliance program. This section will discuss these allowances for removals of pollutants while local compliance programs will be discussed in the following section, although the two are inseparable. Local credits would not be granted without a local compliance program; however, the converse is not true. Regulations providing the opportunity for local assumption of the pretreatment program and for local credits are detailed below in § 403.7 and § 403.8 respectively of these proposed general pretreatment regulations.

The legislative history cautions against requiring redundancies in treatment. However, preventing redundancies in treatment at the national level can be extremely difficult given the extreme variability in POTW's. The vast numbers of indirect industrial discharges, the numerous combinatons of municipal/industrial waste treatment facilities, the extreme variability in pollutant removals experienced by POTW's (even those POTW's of the same treatment configuration), and the need for local decisions on sludge disposal methods make any consideration of these factors in establishing national pretreatment standards extremely difficult. On the other hand, case-by-case modifications of the national standards on the basis of POTW specific removal data is consistent with the intent of the Act, allows case-by-case consideration of POTW removal efficiences and sludge disposal problems and provides greater economic efficiency by preventing redundancies in treatment.

For these reasons, Option I includes a variance provision that would allow modifications of the pollutant limits in national 307 (b) and (c) standards for existing and new sources provided the POTW removes that pollutant to a greater degree than assumed in establishing the national standard. For example, if EPA assumed that the POTW consistently removes 10 percent of the pollutant in establishing the national standard and the POTW actually removes 40 percent of the pollutant, then a variance from the national standard would be allowed to the extent of the additional 30 percent removal. However, no variances would be given in the case of primary municipal treatment systems.

This variance would allow consideration of POTW pollutant removal capabilities where the POTW is designed to remove that pollutant (e.g., physical-chemical systems) as well as for cases where the additional removal is incidental to the treatment configuration. Approximately 900–1000 POTW's are tertiary or physical-chemical treatment systems and a number of these may be specifically designed to remove pollutants from industrial contributors. This variance provides for modifications of the national standards in these situations. In some other cases, secondary biological treatment systems are known to substantially remove pollutants that they are not designed to treat. This is sometimes known as "incidental removal" since the removal is incidental to the operation of the secondary biological treatment system.

The local authority must justify these variances from national standards or local credits on the basis of influent and effluent operating data showing reliable, consistent removal of the specified pollutants. POTW's must submit three months of influent and effluent operating data for each pollutant for which a variance is requested. In the case of POTW's that are under construction, Option I would provide for conditional approvals of the variance on the basis of pilot plant influent and effluent data. The local authorities would have six months after completion of the facility to collect the necessary operating data, recalculate the allowances, if necessary, and submit that data to EPA or the NPDES State or withdraw the request for a variance.

This data must consist of daily composite samples and analyses performed in accordance with EPA test procedures as specified in 40 CFR 136 and established pursuant to section 304(g) of the Act. All sampling and analyses of the specified pollutants during this three month period must be submitted to the approving authority (EPA or the NPDES State) along with an explanation of any significant variations in the data and the steps taken to prevent such variation in the future.

The request for a variance must contain a list of the industrial dischargers to which allowances would be applicable, a list of the pollutants for which allowances are requested, the applicable allowances and proposed alternative locally-enforced pretreatment limits to be applied to each class of dischargers, the supporting data for these allowances (as described above) and a certification from a registered professional engineer that the removal efficiences and alternative pretreatment limits have been calculated in accordance with 40 CFR Part 403 and the Agency's guidelines for computation of allowances.

The proposed alternative local pretreatment standard for a specified pollutant would be derived by use of the following formula:

$$y = \frac{x}{1 - R}$$

where:
x = national numerical pretreatment standard
R = specific POTW removal rate for that pollutant
Y = alternative pretreatment limit.

For example, if the national standard for a specified pollutant is 10 mg/1 and the POTW consistently removes 50 percent of that pollutant, then the new pretreatment limit would be 20 mg/1.

In calculating the alternative pretreatment limits, any allowance for POTW removal of a specified pollutant must be applied equally to all existing and new source dischargers to the POTW. This variance provision does not take into account the effects of dilution in the sewer system.

Since these allowances or local credits may result in additional amounts of incompatible pollutants in the sludge, the POTW would be required to specify its sludge disposal or utilization method, provide data on the amount of these pollutants in the sludge, and show that the disposal or utilization method and facilities available comply with EPA guidelines or regulations, particularly those developed for the disposal of hazardous wastes pursuant to the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580). Along these lines, EPA may consider incineration, land fill, utilization on crops, and ocean discharge (where permitted) as acceptable disposal or utilization methods but would be particularly sensitive to the transfer of these pollutants to other media (i.e., air, ground water, etc.) and their concentration in the food chain. Guidelines for disposal of hazardous wastes may be published separately by the Agency pursuant to the Resource Conservation and Recovery Act of 1976; these guidelines would be incorporated in the 304(f) guidance document on pretreatment.

Additionally, the approving authority would grant variances only where such a variance would not result in violation of applicable effluent limitations, as developed by the State (or by EPA) and specified in the POTW's permit, including effluent limitations established pursuant to section 302 of the Act.

Administratively, this provision would be accomplished by granting a variance where POTW specific removal allowances are approved. The alternative pretreatment standards would become the applicable limitations for industrial dischargers to which the variance applies. At the same time, the local authorities would become the primary enforcement authority and these pretreatment requirements would be enforced through the local authority's industrial waste ordinance, permits, licenses, or contractual agreements. EPA could also enforce the alternative pretreatment limits if necessary. Further, EPA and/or the NPDES State could withdraw approval of the local program or the variances upon 60 days notice of continued violation of either the alternative pretreatment limits or any conditions contained in the POTW's permit. Upon withdrawal of the variance approval, EPA or the NPDES State would notify the industrial dischargers and require compliance with national pretreatment standards as quickly as possible (never more than three years) thereafter.

C. LOCAL COMPLIANCE PROGRAMS

Option I envisions that parallel efforts of all three levels of government—Federal, State and local—would be needed for a successful pretreatment program. Both EPA and the NPDES States would play major roles in enforcing pretreatment requirements; however, Option I provides that local authorities would play the most important role in the enforcement program. As those with the most immediate stake in the success of the pretreatment program, both in terms of protection of the proper functioning of the POTW and in terms of protection of the local environment, local authorities would be the first line of defense. One way they may exercise their crucial role is by means of a local ordinance—a preferred route, and one specifically preserved by section 307(b)(4) which provides for State and local authorities to establish pretreatment requirements "not in conflict" with any Federal pretreatment standard.

(1) *Incentives for local compliance programs.* In Option I, EPA would encourage and assist State and local compliance programs through the incentives discussed above (see Elements Common to all Options). Additionally, in Option I variances for POTW pollutant removals (for even one pollutant) would be granted only to local authorities with an approved local compliance program.

(2) *Local compliance program requirements.* Any local authorities which have jurisdiction over the discharges to and from a publicly owned treatment works, which desire to administer their own pretreatment program, and which pursuant to section 208 of the Act have been designated by the governor of the State as the management agency which shall implement the program would be eligible for assumption of the local compliance program (see section 402.7). Local or municipal authorities in this context include cities, towns, boroughs, counties, districts, associations or other public bodies created pursuant to State law [see section 502(4) of the Act].

Local authorities would be expected to require compliance with Federal technology-based standards or the alternative pretreatment standards (where variances are approved) and to enforce against their indirect dischargers for violations of these standards. To be approved by EPA or the NPDES State the local compliance program would be required to contain a number of authorities, procedures, and program elements. First, local authorities would be required to have an ordinance, statute, contract, permit or joint powers agreement with their indirect industrial dischargers (or parties responsible for the dischargers). As a result, local authorities would be able to enforce pretreatment requirements under contract law or the police powers in the appropriate courts. Second, the local authority would be required to have procedures for receiving and evaluating monitoring reports and for enforcement of violations contained in these reports. Third, the local authority would be required to show that it has the power to require monitoring and reporting, to enter the indirect dischargers' premises, and to carry out inspections. Fourth, the local authority would be required to show it has the funding, personnel, and other resources to implement a pretreatment compliance program including notifying indirect industrial sources of applicable requirements, performing compliance monitoring and reviews, and follow-up procedures in cases of non-compliance. EPA or the State may recommend that the local authority annually audit a specified sample of its indirect dischargers and follow-up these compliance reviews with enforcement proceedings where needed. Finally, the local compliance program would be required to contain the authority and procedures for prohibiting certain hazardous wastes, requiring compliance with applicable standards, and initiating enforcement actions, if needed, including provisions for criminal or civil penalties and civil injunctive remedies. The penalties for non-compliance may be civil and/or administratively imposed surcharges or criminal law penalties (see § 403.9).

A description of these authorities and procedures, copies of applicable statutes and ordinances, and an accounting of funding and manpower for the program along with a description of the organization of the responsible local authority would comprise the local compliance program submission. This compliance program along with the application for any variances for pollutant removals, if requested, would be submitted to EPA or the NPDES States for approval (see § 403.10).

Regulations to implement these provisions of Option I are contained below in § 403.9 and § 403.10. The Agency anticipates that the pretreatment guidance published pursuant to section 304(f) would be of assistance to local authorities in carrying out their responsibilities under these sections of Part 403 and would contain recommended procedures and program elements in more detail, including a model industrial waste ordinance and a model local enforcement program.

Under Option I, in the event that a local compliance program has not been approved by the the time the 208 plan for an area is submitted for approval, the Regional Administrator may, pursuant to 40 CFR 130.15(d), conditionally approve the designation of management agencies. The conditional designation of a management agency would require development and approval of a local compliance program. Failure to fulfill this condition could result in withdrawal of the management agency conditional designation pursuant to 40 CFR 130.15(e) and, where a 201 construction grant has been made that grant could require that up to 10 percent of the grant amount be withheld until the pretreatment program is approved.

(3) *Approval of local programs.* In Option I, EPA or the NPDES States would approve the local authority's application for a variance for pollutant removals (local credits) and the local compliance program. Upon submission of a local compliance program or proposed variance the approving authority (EPA or the NPDES State) would issue a public notice concerning the request for approval, provide a 30 day comment period, and provide an opportunity for a public hearing. The public comment period and/or public hearings, if requested, on both the application for a variance as well as assumption of the compliance program may be held at the same time and it would be recommended that this be done wherever possible.

In general, EPA or the State would be required to approve or disapprove the local program within 90 days after receipt of a proposed variance and/or local compliance program. This period may be extended to no more than 180 days if the public comment period is extended or if a public hearing is held.

Where the NPDES State is the approving authority, EPA would reserve the right to veto the State approval upon a written finding that the local program did not comply with these regulations (40 CFR Part 403) and any guidelines issued thereunder. EPA would have 90 days after receiving notice of State approval of the local program to veto the approval.

Following approval, the local compliance program (with or without local credits) would be incorporated into the 208 plan (if developed separately). Additionally, a POTW's permit may be modified, as appropriate, to include the relevant elements of an approved local program. The local program would remain in effect (except where approval is withdrawn) until the POTW's permit is renewed, thus assuring indirect industrial dischargers of their pretreatment requirements for a specified period of time. When the POTW's permit is renewed, EPA (or the State) would review its approval of the local compliance program and make any necessary revisions, in conjunction with the local authorities, to the compliance program or the allowances for pollutant removals. Where allowances are granted, the POTW would be required to submit influent and effluent operating data for all those pollutants for which allowances have been approved.

Violation of any permit conditions pertaining to the local pretreatment program, significant non-compliance with pretreatment requirements by industrial users of the POTW, or absence of pretreatment enforcement efforts by the local authorities could result in withdrawal of the local compliance program approval. In these cases the approving authority would notify the POTW and the local authority (if different) and they would have 90 days to rectify the situation before EPA or the State would initiate procedures to withdraw the approval.

Upon disapproval, local authorities would be provided the opportunity to reapply for program approval. However, Federal standards and compliance deadlines would apply to industrial contribu-

tors to the POTW unless and until such approval was granted.

Regulatory provisions detailing this approval process are contained below in § 403.11. Additional information on the procedures and process would be included in the 304(f) guidance document.

D. ENFORCEMENT

All three levels of government—Federal, State, and local—would play a role in the enforcement of pretreatment requirements, although local authorities would play the most significant role under Option I.

(1) *Local enforcement, monitoring, and reporting.* Option I emphasizes local enforcement of pretreatment standards and specifically relies on those local authorities with approved compliance programs, as described above.

In Option I, as with the other options, there would be self-monitoring and self-reporting requirements for indirect industrial dischargers. And POTW's would be required to report on their indirect dischargers pursuant to § 403.12 of Part 403 and the conditions of their permit. These requirements are described above in the section on Elements Common to all Options. Additionally, Option I would include a provision, as defined in § 403.12 (b) and (c), allowing EPA or an approved NPDES State to waive some of these monitoring and reporting requirements if the local authority has an approved local program. The monitoring requirements would not be reduced in any case to less than composite samples for one operating day every six months. And, the reporting requirements would not be reduced to less than one year. Opportunity is provided for either the local authority or the indirect dischargers to perform the sampling and analyses where there is an approved local program.

(2) *State and Federal enforcement.* In all areas where local authorities do not assume responsibility for the program, Federal and NPDES State authorities would have enforcement responsibility. In these cases Federal and State authorities would enforce pretreatment standards directly against industry and/or against the POTW where violations of the POTW's permit occurs. These Federal and State enforcement efforts would be focused as follows: (i) indirect industrial dischargers to POTW's without local compliance programs; (ii) where violations of pretreatment requirements occur and local authorities request Federal back-up; and (iii) industrial users of POTW's and local authorities with approved local compliance programs (with or without local credits). The latter would be primarily a check on local efforts towards achieving industrial compliance and on POTW compliance with any conditions of its permit pertaining to the local pretreatment program.

II. LOCAL ENFORCEMENT OF TECHNOLOGY STANDARDS OR WATER QUALITY VARIANCES

This section discusses an alternative option which is the same in most respects as the first option, except it would also authorize variances to allow POTW's to enforce locally-derived water quality-based pretreatment limits in lieu of Federal standards. This option was suggested to the Agency in discussions with representatives of States, municipal authorities and others during the development of the options. It is presented in this proposal because of the importance of these groups to implementation of the pretreatment program.

Water quality variances under this option would be authorized if the local authority implements a local compliance program and can demonstrate that the effluent from the POTW does not cause a violation of Water Quality Standards or, in the absence of such standards, numeric water quality criteria developed by EPA pursuant to section 304(a) of the Act. Where such a water quality variance is approved, continued compliance with State Water Quality Standards or section 304(a) criteria would be made a condition of the POTW's NPDES permit. Like Option I, local considerations would also be taken into account through variances for pollutant removals greater than those assumed in establishing Federal standards, provided an approved local compliance program is being implemented. Federal technology-based pretreatment standards would be promulgated for up to 21 industries and 65 pollutants, as appropriate. These Federal standards would apply (with or without variances for POTW removal capabilities) to industrial contributors to POTW's unless the local authority qualifies for a water quality variance for certain regulated pollutants.

This option is based on the premise that where local compliance programs are being implemented and water quality criteria are being met, Federal standards need not preclude tailoring pretreatment requirements to local conditions. As emphasized by the House Report:

> • • • The Committee • • • does not intend that each individual treatment works would have its pretreatment standards set up by the Administrator.
>
> These standards will not preclude municipalities and states from establishing pretreatment standards not in conflict with any Federal pretreatment standard to control types, flows, concentration, and variability of industrial and commercial discharges into municipal treatment works. It is expected that each manager of a treatment works would provide for such standards. (H. Report No. 92-911, p. 113).

In order to focus attention on the choices offered by the four options, this discussion concentrates on the differences between Option II and the other options. Option II is identical to the first option except that:

(i) It encourages water quality rather than technology-based local compliance programs;

(ii) Local pretreatment standards can supplant national technology standards where water quality variances are approved;

(iii) Federal standards would not apply to industrial contributors to some POTW's until water quality variances are approved or denied in the first two years following promulgation of these general pretreatment regulations; and

(iv) Where water quality variances are approved, POTW permits would be conditioned on continued compliance with water quality standards [or 304(a) criteria] and EPA and NPDES State enforcement would be based on POTW violations of the limits in the NPDES permits.

These differences are further explained below along with major alterations of the proposed general pretreatment regulations.

A. PRETREATMENT STANDARDS AND GUIDANCE

The national standards established in Option II are the same as those in Option I. The guidance, however, would focus on the development of water quality-based pretreatment programs. These items as well as compliance with Federal or local limits are discussed below.

(1) *Coverage of industries and pollutants.* The Federal pretreatment standards established in this option would be identical to those established in Option I. That is, EPA would establish technology-based pretreatment standards under section 307 (b) and (c) for existing and new sources in 8 industries by June 1977 and for up to 21 industries, as appropriate, (including revisions of the first 8) by December 31, 1979. These standards would generally apply to 95 percent of the indirect dischargers in each industry. Like Option I, these standards would establish limits in the 21 industries for 65 toxic pollutants as well as other incompatible pollutants which cause POTW interference/inhibition or pass-through the POTW inadequately treated.

(2) *Short-term local programs and guidance.* As in Option I, EPA would encourage development of local compliance programs to implement locally-derived pretreatment limits even while the Federal standards are being developed. However, rather than technology-based standards, it is expected that the locally-derived pretreatment limits would be based upon water quality considerations and prevention of POTW inhibition and interference. To assist in the development of local standards, EPA would publish under section 304(f) of the Act guidance describing numeric ranges of water quality-based concentration limits for various incompatible pollutants applicable to all sources of a pollutant and enforceably by grab sample. These recommended ranges would be based upon numeric limits used in a number of existing water quality-based local programs as well as available pretreatment technologies. The guidance would explain the factors to be taken into account in establishing specific limits and include sample formulas for applying the water quality-based limits to industries. This guidance would cover pollutants from the 21 industries subject to Federal standards as well as other significant industries.

To further assist States in developing water quality standards and local au-

thorities in determining local pretreatment standards, EPA would publish by June 30, 1978, section 304(a) guidance on water quality criteria. The criteria would reflect the latest scientific knowledge on the kind and extent of all identifiable effects on aquatic organisms and human health of the 65 toxic pollutants.

Under Option II a locally-derived pretreatment limit would continue as the only applicable industry standard for new and existing sources if a water quality variance was granted for that pollutant. Wherever a water quality variance was not approved, industry would be subject to the Federal technology standard. These locally-derived pretreatment limits would also continue in effect for pollutants or industries not covered by Federal technology-based standards.

(3) *Compliance.* As in Option I, industries would be required to comply with the Federal standards for new and existing sources by July 1, 1980 or within three years of promulgation of the standards, whichever is longer. A compliance date would be established in each categorical pretreatment standard when promulgated. Shorter compliance deadlines may be established where feasible or where substantial risk to human health or the environment may result from delays in compliance.

Under Option II, some local authorities applying for water quality variances would require time to determine whether their POTW effluent complies with numeric State Water Quality Standards or 304(a) water quality criteria. In such cases, industry could be required (within the span of three years) to initially comply with local pretreatment limits, then with Federal technology standards, and then again with local standards where a water quality variance is approved.

In order to minimize such fluctuations in regulatory requirements, Option II anticipates an initial time during which Federal standards would not be applicable to indirect dischargers where local authorities are applying for water quality variances. Simultaneous with promulgation of these general pretreatment regulations (40 CFR Part 403) or shortly thereafter, EPA would publish in the FEDERAL REGISTER an initial list of the pollutants and industry subcategories for which it anticipates issuing Federal standards in the next several years. Local authorities would have 90 days after such publication in the FEDERAL REGISTER to notify EPA of their intent to apply for a water quality variance and seek approval of a local compliance program. Where the local authority with powers to implement a local compliance program does not also manage the POTW, joint notification by the managers of the POTW and the local authorities would be required. EPA would publish in the FEDERAL REGISTER the list of applicants, the date of filing, and the pollutants for which variances are being sought. Local authorities which had filed a notice of intent would have up to two years from the date the notice was filed to develop a local pretreatment program, document their claim that applicable numeric State Water Quality Standards or 304(a) criteria were not violated by their discharge, and seek the approval of EPA or the NPDES State. Thereafter, a decision to approve or disapprove the local compliance program and/or the water quality variance would be required within three months. This time for approval or disapproval could be extended up to six months where the public comment period was extended, a public hearing was held, or other factors warranted an extension.

The Federal pretreatment standards would be applicable to all industries discharging to POTW's which did not assert a claim of compliance with the applicable Water Quality Standard(s) or 304(a) criteria by filing a notice of intent. If the variance were granted within two and one-half years, local standards would be the only standards applicable to these industrial dischargers. However, if the variance were denied, the Federal standard would become applicable upon publication of the disapproval in the FEDERAL REGISTER. That is, upon disapproval, compliance with the Federal standards would be required within the compliance time allowed by the standards. Local authorities could apply for a water quality variance any time after the 90-day period for filing a notice of intent; however, Federal pretreatment standards would remain applicable unless and until the variance was approved.

Industries discharging to a POTW which sought and was denied a water quality variance for specific pollutants, could have up to 38 months more to comply with the Federal standards for those pollutants than industries discharging to POTW's which did not seek a variance. This estimate of 38 months applies to pretreatment standards issued by June 1977 (the first 8 industries) and assumes the standard allows three years for compliance. In some instances, the maximum time allotted for compliance with Federal standards is expected to be considerably less than the statutory three years. Compliance would not be a significant problem for industries in the remaining 13 subcategories potentially subject to Federal pretreatment standards (and for revisions of the first 8) since these industries would know if they are subject to Federal standards within approximately 7 to 13 months after promulgation of the pretreatment standard. These industries would then have up to two years to comply with Federal standards, where variances are not granted.

If Option II were promulgated, the general pretreatment regulation would require that the notice of intent to develop a local pretreatment program and apply for a water quality variance describe the monitoring and analysis program to document the POTW's assertion of compliance and provide a list of milestones for developing the documentation and the local program. EPA would neither approve nor disapprove the submittal. However, the POTW would be required, together with its regular reporting pursuant to its NPDES permit, to certify that the milestones were being met. Upon a finding by EPA or an NPDES State that progress was not being made according to schedule and upon 60 days written notice to the POTW and contributing industries, EPA or an NPDES State could apply the Federal standards to industries discharging to the POTW by publishing disapproval of the variance in the FEDERAL REGISTER. Enforcement of the Federal pretreatment standards would be the responsibility of the NPDES State or EPA. If the local compliance program but not the water quality variance was approved, enforcement of the Federal standards would be the responsibility of the local authority.

B. LOCAL COMPLIANCE PROGRAMS

Option II, like the first option, is based on the premise that local authorities have the most important role in any successful enforcement program.

(1) *Incentives for local programs.* From the beginning in Option II the Agency would encourage development of local programs to implement locally derived pretreatment limits which are based upon considerations of water quality and POTW inhibition and interference. These locally derived pretreatment limits would be in effect while national standards are developed. If the local compliance program and locally derived pretreatment limits are approved as adequate to protect water quality, local authorities would continue to enforce the local limits as the only applicable standards.

To assist in the development of State and local compliance programs, Option II includes the incentives and disincentives discussed above in Elements Common to all Options. The primary incentive in Option II is the water quality variance (see discussion below).

(2) *Modification of national standards (local credits).* As in Option I, local authorities with approved local compliance programs would, in addition, be allowed to modify the Federal technology-based pretreatment standards to be more or less stringent upon local documentation that the specific POTW removal capabilities are consistently in excess of those removals assumed for secondary biological treatment systems in developing the Federal standards. The requirements governing eligibility for and approval of these variances for POTW removals are described in Option I and the proposed general pretreatment regulations (see section 403.8).

In summary, under Option II, local pretreatment limits provide a base level of control for all indirect dischargers. Where local pretreatment programs have been approved, Federal technology-based standards enforced by the local authority (with or without local credits) supplement the local pretreatment limits wherever the local authority is unable to demonstrate that the local limit is adequate to protect water quality.

(3) *Water quality variances.* Local authorities may apply to EPA or an NPDES State for approval of a water quality variance. In seeking approval, the local authority must bear the burden of proof. A water quality variance would be granted if the POTW has an approvable local compliance program and if the POTW effluent does not:

(i) Violate EPA approved numeric State Water Quality Standards for the regulated pollutant at the point of discharge and downstream; or

(ii) Where mixing zones are allowed by State law, violate any limitations necessary to meet the numeric State Water Quality Standards outside a mixing zone upon a demonstration, acceptable to EPA or the NPDES State, that a mixing zone is appropriate. In no instance, however, would mixing zones be allowed where the water quality variance was for a bioaccumulative or persistent pollutant or for a carcinogenic, mutagenic or teratogenic pollutant (see discussion below). If a mixing zone is deemed appropriate, the POTW effluent limitations must be consistent with the regulations implementing sections 208 and 303(e) of the Act concerning point source load allocations (40 CFR 131.11(g)); or

(iii) Violate numeric water quality criteria in the latest edition of EPA's "Quality Criteria for Water" published pursuant to section 304(a) of the Act, such criteria to be measured at the point of discharge; and

(iv) Violate any more stringent State law or regulation (under authority preserved by section 510 of the Act), including but not limited to State ground water standards; and

(v) Violate any other Federal law or regulation, including but not limited to the hazardous waste disposal guidelines and regulations to be issued pursuant to the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580).

The Agency recognizes that the actual discharge concentration from a POTW does not remain the ambient concentration because the effluent normally disperses following discharge and becomes greatly diluted. The area of dilution is often referred to as a "mixing zone." While there may be adverse effects on some organisms in the immediate vicinity of the outfall, chronic effects require lengthy exposure time—sometimes a lifetime. Even acute toxic effects, which normally occur at much higher dosage levels, are generally recorded based on a 96-hour exposure time.

While recognizing these realities, the Agency has concluded that certain toxic chemicals which are bioaccumulatory and persistent in the environment should not be assigned mixing zones in granting water quality variances. These types of pollutants concentrate by multiple orders of magnitude in sediments and aquatic biota. In addition to any adverse ecological effects, fish and shellfish which have been exposed to such pollutants may become unsuitable for human consumption. Water quality criteria levels recommended by EPA are specified at concentrations which should minimize these adverse effects. As a result, the Agency believes criteria values for these pollutants should not be violated instream by allowing a mixing zone particularly since the water quality variance, by focusing on the POTW's effluent, allows POTW influent to dilute toxic concentrations. The influent dilution alone may allow a potentially large total environmental burden to be discharged from combined industrial sources.

The Agency further believes that toxic chemicals which pose, or are reasonably suspected of posing, threats to human health by being carcinogenic, mutagenic, or teratogenic should not be assigned mixing zones. Knowledge of known safe exposure levels for these types of substances are very limited and, as a result, human exposure should be minimized. The dispersion and dilution factors discussed above, while acknowledged, are expected to insure that in most cases an ample margin of safety is provided. Based upon information currently available to EPA, toxic pollutants which are bioaccumulative, persistent, carcinogenic, mutagenic or teratogenic are specifically identified on the list of 65 toxic pollutants in "Information for Proposed General Pretreatment Regulations (40 CFR Part 403)" which is available upon request. As each pollutant is considered further by the Agency both in developing pretreatment standards and in developing an integrated strategy for dealing with toxic pollutants in air, water, and on land, this list could be revised.

For all other toxic pollutants which could be potentially regulated under Option II (see list of 65 toxic pollutants described above), EPA is interested in public comment on the criteria which should be used in determining when, if ever, it would be appropriate to consider a mixing zone in granting water quality variances. In designing any mixing zone permitted under this water quality variance, local authorities would be required to assume best available technology for maximizing outfall diffusion and minimizing the mixing zone.

In documenting that the POTW effluent meets the criteria for approval of a water quality variance, the analysis would be based upon the worst case conditions during the preceding year. Where receiving waters are designated for more than one beneficial use, approval of the variance would be based on protection of that use having the most stringent requirements. Where POTW treatment processes are expected to be upgraded before 1983, approval of the variance would be based upon the present in-place treatment processes, unless data from a pilot plant were presented and concept approval had geen given the upgrading. Water quality variances based on future upgradings to be completed before 1983 would be conditionally approved upon documentation within six months of POTW completion that the expected compliance was, in fact, achieved.

(4) *Local program requirements and approvals.* The requirements for initial and continued approval of a local compliance program under Option II are identical to those under Option I, except that Option II requires local enforcement of locally derived pretreatment limits in lieu of national technology-based standards (with or without local credits) for pollutants for which water quality variances are granted.

The procedures for approval of the water quality variance, including public participation, would be the same as the procedures for approval of a local compliance program, as specified in the discussion of Option I and the proposed general pretreatment regulations, but with one addition. EPA concurrence would be required where the State approval of a water quality variance concerned suspected carcinogenic, mutagenic or teratogenic pollutants.

The approval procedures would provide, at the discretion of the approving authority, for combining the hearings on approval of the local pretreatment program, variances for POTW removal capabilities, and/or water quality variances.

C. ENFORCEMENT

Although the combined efforts of local, State and Federal government will be needed for a successful enforcement program, this option places the major responsibility for achieving compliance on local authorities.

(1) *Local enforcement, monitoring and reporting.* Wherever local compliance programs are approved, enforcement by the local authorities of Federal and local pretreatment standards and industrial monitoring and reporting would be as described in Option I and the proposed general pretreatment regulations, except as modified below for water quality variances. Because of the greater local flexibility in Option II, the number of approved local pretreatment programs is expected to be larger than in Options I and IV.

Local authorities granted water quality variances would be responsible for enforcing local pretreatment standards so as to comply with POTW effluent limits based on State Water Quality Standards or 304(a) criteria. Continued compliance with water quality standards or 304(a) criteria would be made a condition of the POTW's permit upon reissuance. Pollutants for which a water quality variance had been granted would be monitored by the POTW in its effluent and reported to the NPDES permit-issuing authority as required by the terms of its permit and 40 CFR 125.27. Industries discharging pollutants for which a water quality variance had been granted would be subject to locally developed monitoring and reporting requirements. Monitoring reports from these industries would not be forwarded to EPA, although pursuant to section 308 of the Act, they would be required to be made available upon request.

(2) *State and Federal enforcement.* Where local authorities do not assume program responsibility, EPA or the NPDES States would be responsible for enforcement. In these cases, no water quality variances or variances for spe-

cific POTW removal capabilities (local credits) would be considered in enforcing the national technology-based pretreatment standards, since these variances require action by a third party (i.e., the POTW). EPA or NPDES State enforcement efforts would be as described in Option I.

III. Local Enforcement of Toxic Technology Standards

This section discusses an alternative strategy which is similar to the first option, except it would result in Federal technology-based standards for only the most hazardous pollutants and the more significant industrial plants discharging those pollutants. Less significant pollutants and sources would be controlled by local standards. Federal standards which focus on toxic pollutants and on the most significant dischargers were suggested by representatives of a number of States, municipal authorities and others as the pretreatment options were being developed. These discussions resulted in the development of Option III and it is presented in this proposal because of the importance of these groups to a successful nationwide pretreatment program.

This option would implement the pretreatment program in two stages. The first stage would be to establish pretreatment programs in substantially all municipal systems which have significant industrial inflows. The pretreatment programs established would be similar to those already existing in several cities. These basic pretreatment programs would then form the foundation in the second stage on which to build local compliance programs capable of enforcing more stringent Federal technology-based standards for toxic wastes discharged by the most significant sources as well as local pretreatment limits for other dischargers. Extensive local flexibility would be provided under this option, since local authorities would establish the pretreatment requirements for all industrial contributors except that limited number covered by Federal standards. For those dischargers to which Federal standards apply, local flexibility would be taken into account through variances for specific, documented POTW removal capabilities (as in Option I) provided there is an approved local compliance program. In addition, where appropriate, specific numeric POTW effluent limits would be incorporated into the municipal permit. The means of achieving compliance with these limits would be a local decision. In the absence of an approved local pretreatment program, Federal standards would be enforced by EPA or the NPDES States without allowances for removals.

This option is based on the concept that Federal efforts should encourage early and undisturbed local control of most incompatible pollutants. In encouraging substantial local regulation of indirect discharges, Option III is consistent with the following view in the Senate Report:

> It is clear that the Administrator may be unable to establish such (pretreatment) standards for all pollutants which require such control. Therefore, the provisions of this section do not relieve municipalities and states from establishing pretreatment standards to control rate, flows and concentration of industrial discharges into waste treatment works. (S. Rept. 92-414, p. 61).

In addition, Option III is based on the premise that technology-based standards should be used to control to the maximum degree the most significant pollutants with known or suspected toxic effects on humans or aquatic organisms. Option III is most consistent with the focus on toxic pollutants in section 307 (a) and with the emphasis in the House Report that national pretreatment standards should be addressed to the most significant pretreatment problems while allowing local authorities discretion to establish local standards which are "not in conflict" with Federal standards. (H. Report No. 92-911, p. 113).

Option III is identical to the first option except that: (i) Federal pretreatment standards would be limited to the most hazardous and/or toxic pollutants and the more significant sources. Consequently, Federal standards would regulate less than 21 industries and possibly less than 65 toxic pollutants.

(ii) Local compliance programs would be developed in two stages. The first stage would enforce local standards based on water quality, POTW interference and inhibition, and/or pretreatment technology. The second stage would add a limited number of Federal technology-based standards to the local pretreatment program.

(iii) Where appropriate, specific numeric POTW effluent limits would be included in municipal NPDES permits. POTW's would be responsible for developing the local programs necessary to comply with these limits.

These differences are further explained below along with any major modifications which would be necessary in the proposed general pretreatment regulations.

A. Pretreatment Standards and Guidance

Option III envisions two stages in the evolution of pretreatment standards. The first stage would concentrate on developing local enforcement programs to implement locally-developed pretreatment limits for all industrial discharges to municipal systems while the national standards are being developed. The local limits would continue to be enforced in the second stage, but more stringent Federal standards would provide a method of tightening pretreatment requirements for the more significant industrial dischargers of toxic and hazardous pollutants.

The local pretreatment limits established in the first stage would have a continuing importance in the second stage. They would provide a minimum level of control for less significant industries and/or pollutants not subject to Federal regulation.

(1) *Basis for guidance.* To assist local authorities in developing local pretreatment limits in the first stage, EPA would issue detailed guidance under section 304 (f) on ranges of pretreatment limits for all incompatible pollutants from all industries. The guidance would include limits for toxics, metals, and other incompatibles and it would explain the factors to be taken into account in developing specific local limits. The guidance would include those industries to be covered by subsequent Federal standards as well as other significant industries.

Recommended ranges of limits in the guidance would be based on the standards used by a number of existing exemplary local programs which are designed to prevent interference or inhibition in POTW operations and to prevent pass-through of pollutants inconsistent with Water Quality Standards. These limits would also be based, in part, on available pretreatment technologies. Pretreatment limits established by five municipal programs ranging in size from moderately small to very large metropolitan systems have been reviewed. These standards, and most other existing local standards, were found to consist of single maximum pollutant concentration limits, applicable to all dischargers of the pollutants and enforceable on the basis of a single grab sample. The limits in the 304(f) guidance under Option III would be consistent with this approach.

The above review of five municipal programs also showed that the local limits for 14 incompatible metals established by four of the five municipal authorities would result in the installation of pretreatment technologies generally equivalent to those which may well be required by technology-based pretreatment and/or direct discharge standards.

(2) *Basis for standards.* During the first stage, EPA would promulgate pretreatment standards for new and existing sources to be enforced as the second stage develops. The Federal pretreatment standards for existing sources would be based on appropriate pretreatment technologies (see discussion in Elements Common to All Options) and the standards for new sources would be developed in a manner analagous to new source performance standards. However, unlike the other options, the third option would develop uniform numeric limits, wherever possible, for all regulated sources of a pollutant regardless of the industrial subcategory. Where a single limit is possible, it would eliminate the need for local authorities to know the discharger's products and processes and would facilitate determining compliance by grab sample. However, it should be recognized that this approach could result in somewhat more lenient standards based on the highest technologically and economically acceptable number for all industrial subcategories. Thus, Option III is more consistent with and builds upon existing local programs by attempting at the national level and allowing at the local level the establishment of identical numeric standards for pollutants from different industrial categories.

(3) *Coverage of pollutants.* The public should be aware that in Option III the pollutants covered, the industrial categories and subcategories Federally-regulated, and the anticipated extent of coverage of dischargers in each industry may be inconsistent with the NRDC/EDF consent decree. If Option III is selected, it would be necessary for the Agency to file a motion with the U.S. District Court for the District of Columbia requesting modification of the consent decree.

Under Option III, EPA would promulgate technology-based standards for only the most hazardous pollutants. These standards would regulate pollutants which are known to occur in effluents, aquatic environments, fish, and/or drinking water and to have toxic effects on humans or aquatic organisms at sufficiently high concentration. In addition, most of the pollutants to be regulated by Federal standards in Option III have been identified as possibly having carcinogenic, mutagenic or teratogenic effects in humans, other animals, or bacterial screening systems. Option III, unlike the other options, would not result in Federal standards for non-hazardous pollutants. Development of standards for other than hazardous pollutants would be the responsibility of local authorities.

The 65 toxic pollutants named in the NRDC/EDF consent decree would be the pollutants considered for Federal regulation under Option III. As additional toxic pollutants are identified by the Agency they may be added to this list of candidates for Federal standards. The criteria for excluding any of the 65 toxic pollutants from Federal regulation are prescribed by the consent decree and are discussed above in Elements Common to all Options. In addition, as explained below, some of these pollutants may not be regulated by Federal standards if they are discharged by industrial subcategories dropped from the list of 21 industries.

(4) *Coverage of industries.* It is anticipated that Option III would result in national standards for fewer than 21 industrial categories over the next three years. Option III would probably result in Federal standards for any of the 21 industrial categories:

(i) Where the total raw waste load of any toxic pollutant discharged by all sources in a category was greater than five percent of the cumulative raw waste load from all indirect dischargers (in the 21 industrial categories) discharging the same pollutant; and/or

(ii) Where the total raw waste load of any toxic pollutant discharged by all sources in a category was 15 percent or more of the cumulative raw waste load from all categories (in the 21 industries) discharging the same pollutant to PO TW's and to navigable waters. The only industrial categories that would be excluded from Federal regulation would be those discharging less than 15 percent of the cumulative raw waste load of toxic pollutants and for which substantial evidence of primary carcinogenic, mutagenic, or teratogenic effects is lacking.

Considering these criteria and based upon information currently available to the Agency, it could be anticipated that EPA would promulgate Federal standards for approximately 13 of the 21 industrial categories:

Leather tanning and finishing.
Steam electric power plants.
Electroplating.
Textile mills.
Auto and other laundries.
Organic chemicals manufacturing.
Paving and roofing materials.
Soap and detergent manufacturing.
Pulp and paperboard mills and converted paper products.
Miscellaneous chemicals.
Machinery and mechanical products manufacturing.
Plastic and synthetic materials manufacturing.
Timber products processing.

One or more of the above industrial categories may also be excluded from Federal regulation under Option III if it includes no "significant" dischargers of toxic pollutants as determined by comparison with the raw waste loads for the same pollutants discharged by the other industrial categories. As discussed above, any final decision on the industrial categories to be Federally-regulated under Option III would be made only after reconsideration before the United States District Court of the District of Columbia.

Federal standards would apply to the more significant plants in industries discharging toxic and/or hazardous pollutants. Federal standards would not necessarily apply to 95 percent of the dischargers in each industry, as in the other options. Less significant dischargers of the regulated pollutants would be subject to State or local regulation based on the section 304(f) guidance.

The definition of "more significant dischargers" in each industry would be made when the standards for that category are promulgated. In order to ensure adequate environmental protection, the pollutant loadings to muncipal systems would be the major factor used to determine which indirect dischargers in an industry would be subject to Federal regulation. In selecting a raw waste load cutoff above which industries would be subject to regulation, the Agency would attempt to ensure that the cutoff would be generally the same for all industrial categories discharging the pollutant. In this way, regulation of different industrial categories would be commensurate with their share of the discharge of toxic pollutants and Federal, State and local enforcement resources would be focused on the most significant sources of hazardous pollutants.

Other factors which would be considered in selecting the most significant dischargers within each industrial category would include: (i) The significance of the effects of the pollutants on the environment and on human health;

(ii) The degree to which the pollutant is removed by secondary biological treatment processes;

(iii) The number of other toxic pollutants discharged by the industrial category;

(iv) The number of dischargers subject to regulation and the estimated resources required for enforcement;

(v) The potential for significant pollution, particularly in large municipal sytems, from the cumulative discharges of sources below the cutoff; and

(vi) The economic ability of the industry to comply with Federal standards.

In some industrial categories these criteria would result in Federal regulation of all dischargers if they represent a large percentage of the aggregate discharge of a hazardous pollutant. In addition, the above criteria may be modified as a result of Agency efforts to develop an integrated strategy for dealing with toxic pollutants found in air, water, and on land.

(5) *Compliance.* The compliance dates in Option III would be identical to those discussed in Option I.

B. LOCAL COMPLIANCE PROGRAMS

Option III, like the first two options, is based on the premise that local authorities have the most important role in any successful enforcement program.

(1) *First stage.* In recognition of the importance of local efforts, the first of the two stages in Option III emphasizes building the local capability to manage local pretreatment programs. EPA would encourage all local authorities with industrial contributors to establish pretreatment programs similar to those already developed by several municipal treatment systems which have addressed the past-through of industrial pollutants. This would involve the adoption of a local industrial waste ordinance, contracts, or joint powers agreements to implement such programs; the appropriation of municipal resources; the recruitment and training of personnel; and the actual undertaking of inspection, monitoring and enforcement activities. The local ordinances, contracts, or joint powers agreements would establish maximum concentration limits to be enforced by grab samples and applied to all industrial sources of incompatible pollutants.

EPA would initiate a number of efforts during the first stage to encourage and assist in the development of local pretreatment programs. EPA would issue in the 304(f) guidance document a detailed description of the types of pretreatment programs which municipalities should establish. The section 304(f) guidance would also include recommended numeric ranges of concentration limits for all industries, as discussed earlier, as well as model ordinances, user charge systems and other information (see ELEMENTS COMMON TO ALL OPTIONS). The guidance would provide information around which EPA, in conjunction with other interested groups, would conduct conferences, technology transfer seminars and other efforts to assist in the establishment of these local pretreatment programs. To further assist in the development of State and local programs, Option III also includes the incentives discussed above in Elements Common to All Options. All of these efforts would

assist local authorities in building the institutional capability to manage more sophisticated pretreatment programs in the second stage and to comply with the proposed 1983 municipal permit requirement for an approved local pretreatment program.

(2) *The transition and the second stage.* The transition from the first to the second stage would occur gradually and somewhat unevenly from one municipality to another. It is estimated local authorities would require 18 to 24 months to develop local compliance programs, and longer where State enabling legislation is required. As EPA promulgates pretreatment regulations for specific industries, these regulations would apply directly to all industrial dischargers covered by the standard. However, these more stringent technology-based standards would apply to only the more significant dischargers of the most hazardous pollutants and, to the extent possible, these standards would be uniform limitations applied to all dischargers of the same pollutant.

As the Federal standards were promulgated, EPA would encourage local enforcement of the locally-developed pretreatment limits for the vast majority of dischargers and local enforcement of the national technology-based standards for that limited number of dischargers regulated by Federal standards. Where local compliance programs developed during the first stage are approved by EPA or an NPDES State, local authorities would have the primary responsibility for enforcement of the Federal technology-based standards (as in Option I). The requirements and procedures for initial and continued approval of the local pretreatment program under Option III would be identical to those explained in Option I and included in the proposed general pretreatment regulations.

As in Options I and II, POTW's with approved local enforcement programs would, in addition, be allowed to modify the Federal technology-based pretreatment standards upon documentation that the specific POTW removal efficiencies are consistently in excess of those assumed for secondary biological treatment systems in developing the Federal standards. The requirements governing eligibility for and approval of such a variance for POTW removals are described in Option I and section 403.8 of the proposed general pretreatment regulation.

In addition, under Option III specific numeric POTW effluent limits for incompatible pollutants (e.g., heavy metals, etc.) may be incorporated into reissued municipal NPDES permits where problems arise in the operation of the POTW, including disposal of sludges containing industrial wastes, or in complying with State Water Quality Standards. The POTW would be responsible for developing the local programs necessary to comply with these effluent limits. The NPDES permit requirements would be based upon national guidance on POTW interference and inhibition, water quality analyses pursuant to section 208 or 201 planning, and Federal standards for hazardous waste management appropriate to the locally-selected sludge disposal method and as developed pursuant to Subpart C of the Resource Conservation and Recovery Act of 1976.

In summary, in the second stage, EPA would encourage local enforcement of locally-developed pretreatment limits for most dischargers of incompatible pollutants as a base level of control. Where local compliance programs developed in the first stage were approved, national technology-based standards (with or without local credits) for the more significant sources of the most hazardous pollutants would be enforced by the local authorities. In addition, where special problems with incompatible pollutants warranted, the municipal NPDES permit would, upon reissuance, include numeric POTW effluent limits to be met by local authorities through their pretreatment program. In the absence of approved local pretreatment programs, EPA or NPDES States would enforce national technology-based standards without modification directly against industrial dischargers.

C. ENFORCEMENT

Option III, like the first two options, places the major responsibility for a successful enforcement program on those local authorities with approved local pretreatment programs.

(1) *Local enforcement, monitoring and reporting.* Wherever local pretreatment programs are approved, local enforcement of applicable retreatment standards and industrial monitoring and reporting would be as described in Option I and the proposed regulations. That is, local authorities would notify all indirect dischargers, perform compliance reviews and monitoring, and enforce pretreatment standards. Because of the greater local flexibility in Option III, the number of local pretreatment programs is expected to be larger than in Options I and IV.

(2) *State and Federal enforcement.* EPA or the NPDES State would back-up local enforcement where requested, as in Options I and II. Where local authorities do not assume program responsibility, EPA or an NPDES State would be responsible for enforcement. Where EPA or an NPDES State determines that enforcement by an approved local compliance program is inadequate, EPA or the State may take enforcement action against the POTW for violation of its permit, or directly against the industry pursuant to sections 307(d), 308, and 309 of the Act, or withdraw local compliance program approval, as described in Option I. Compliance monitoring and reporting requirements in such instances would be identical to those described in Option I and the proposed general pretreatment regulations (see 403.12).

IV. FEDERAL/STATE ENFORCEMENT OF TECHNOLOGY STANDARDS

Option IV, unlike the previous three options, would establish a regulatory program which relies heavily upon EPA and NPDES States for its implementation. EPA would promulgate technology-based standards for 8 industries this year, at least 21 industries (including revisions of the first 8) within the next three years, and probably for 5 to 10 other industries in subsequent years. These standards would cover most, if not all, incompatible pollutants discharged to POTW's; it is anticipated only biochemical oxygen demand (BOD) and suspended solids (SS) would not be regulated. These standards would be based on appropriate pretreatment technologies (APT) taking into account technical and economic constraints. Municipal treatment plant removal capabilities would be considered in determining whether a pollutant was compatible or incompatible and in determining the level of technology to be used as the basis for numeric national standards. This option would authorize case-by-case variances for POTW removal capabilities in fundamentally different sewage treatment plants only, provided the POTW justifies the modifications on the basis of specific treatment plant removal data. These variances would be granted fundamentally different POTW's only if a specified pollutant is removed to a greater degree than assumed in setting the national standard. No variances would be granted biological treatment systems.

The national standards would be enforced directly against all regulated industries by EPA or NPDES States. Local compliance programs would be encouraged so as to ensure compliance with the proposed municipal NPDES permit requirement for local pretreatment programs by 1983. EPA guidance and incentives described earlier in Elements Common to All Options would be used to encourage development of local programs. These local compliance programs would be encourage to adopt technology-based standards, but they would supplement rather than supplant Federal and State enforcement of national standards.

This option is based on the premise that pretreatment can be most effectively and equitably achieved nationwide by Federal and NPDES State enforcement of broadly inclusive national standards. This is consistent with section 402(b) of the Act which requires all States who apply for the NPDES program to have:

> • • • adequate authority • • • to issue permits which apply and insure compliance with, applicable requirements of sections 301 • • • 307 • • • (and) to insure that any user of any publicly owned treatment works will comply with sections 204(b), 307, and 308.

The basic premise is also consistent with section 307(d) of the Act which provides that operation of a source in violation of pretreatment standards is unlawful and the enforcement mechanisms of section 309 are available to the Administrator to prevent or penalize such unlawful behavior.

A. PRETREATMENT STANDARDS

This discussion covers the industries to be regulated by national standards, the

coverage of pollutants and compliance dates.

(1) *Coverage of industries.* Option IV would cover the largest number of industries of the four options. National standards would be established in three groups. Pretreatment standards would be established for 8 industries before June 1977 and for at least 21 industries (including revisions of the first 8), as appropriate, by December 31, 1979. Standards would be established for up to an additional 10 industries after 1979. The industries included in the first two groups are identified above in BACKGROUND. All other industries for which the Agency has established direct discharge standards would be candidates for pretreatment standards in the third group. However, since standards would be established only on incompatible pollutants it can be assumed that under Option IV the Agency would promulgate standards for up to 10 additional industries.

Under this option, it can further be assumed that pretreatment standards would be established for most, if not all, of the industries in the first two groups unless the majority of the pollutants discharged to POTW's are compatible with the POTW or the amount and toxicity of such wastes are not significant enough to justify expending national resources to develop the regulations. The guidelines for excluding any of the 21 industries are described in greater detail above in ELEMENTS COMMON TO ALL OPTIONS. Similar guidelines would be used to determine which industries would be covered by Federal standards in the third group.

In general, and as described in Option I, these national standards would apply to at least 95 percent of the indirect sources in each industry (based on numbers of sources or volume of pollutants discharged). Subpart regulations containing pretreatment standards for the first 8 industries would be promulgated separately this year. These standards would then be reviewed for any necessary revisions, including the control of toxic pollutants (see below), and standards for the remaining 13 industries would be developed within the next three years.

Pretreatment regulations for these remaining 13 industries and the revisions to the first 8 industries would be promulgated at the same time and in the same subpart as the revised BAT direct discharge standards for these industries. The pretreatment standards would be based on appropriate pretreatment technologies taking into account technical and economic constraints (see discussion in ELEMENTS COMMON TO ALL OPTIONS). And POTW removal capabilities would be considered in determining the level of technology upon which to base the national standard. These regulations would all be issued between March and December of 1979. As a result, Option IV would provide equity in terms of regulatory coverage between direct and indirect dischargers in the 21 industries, and would come the closest to providing equity in terms of the limitations and, thus, cost of application of the technologies.

(2) *Coverage of pollutants.* Option IV anticipates pretreatment standards would be developed for all pollutants other than BOD and SS. These two pollutants are similar, in all material respects, to the pollutants which are found in municipal sewage and which pursuant to 40 CFR 133 (Secondary Treatment Regulation), the POTW should be designed to treat. While POTW removal capabilities would be considered in determining compatibility/incompatibility of pollutants, the Agency would be conservative in determining any additional compatible pollutants.

Pretreatment standards for the first 8 industries would regulate metals, chemicals, and other incompatible pollutants such as oil and grease of a mineral origin, etc. The standards for the 21 industries (including the first 8 upon revision) would regulate any of the 65 toxic pollutants found in significant amounts in the effluent discharged from these industries. All incompatibles, including the 65 toxic pollutants, would be regulated unless the pollutant is not present in the discharge, present only in trace amounts, or present solely as a result of its presence in the industry's intake waters.

(3) *Compliance.* Under Option IV, compliance with national standards for existing sources would be required within three years of promulgation pursuant to section 307(b) of the Act. Shorter compliance deadlines may be established where feasible or where substantial risk to human health or the environment may result from delays in compliance (i.e., particularly in the case of toxics). A compliance date would be established in each pretreatment regulation when promulgated. Compliance with new source retreatment standards would be required upon promulgation.

B. MODIFICATION OF THE NATIONAL STANDARDS (POTW VARIANCE)

Option IV would include a variance provision to allow modification of the Federal pretreatment standards in cases where the POTW can be shown to be fundamentally different from the secondary biological treatment system on which the promulgated standard was based (POTW variance). These case-by-case modifications of the national standards for fundamentally different POTW's would be consistent with the intent of the Act, would allow a limited consideration of POTW removal capabilities and sludge disposal problems, and would prevent redundancies in treatment.

Case-by-case adjustments of the pollutant limits in existing and new source pretreatment standards would be considered for fundamentally different POTW's achieving a pollutant removal efficiency greater than assumed in establishing the national standard. Since the national standards would be based upon secondary biological treatment systems, it is anticipated that physical-chemical systems would be eligible for a variance. Also, eligible for a variance would be special variants or combinations of biological treatment systems that are primarily intended and designed to treat industrial pollutants rather than domestic waste. This POTW variance would allow for case-by-case modifications to handle these special situations. No modifications of the national standards would be considered for municipal secondary biological or primary treatment systems. Thus, the number of POTW's eligible for this variance should be considerably fewer than the number eligible for local credits in the other options.

The amount of credit granted for removal capabilities achieved by fundamentally different POTW's would be the documented removal. The modified pretreatment standard for a specified pollutant would be derived as described for local credits in Option I. No provision would be made for the effects of dilution and a credit would be applied equally to all existing and new source dischargers of that pollutant.

To receive EPA approval of the variance, an eligible POTW would be required to justify the modifications on the basis of POTW specific removal data, adequate sludge disposal or utilization methods, and compliance with applicable water quality standards. The requirements and documentation of removal capabilities would be the same as described in Option I, except the credits would be available only to fundamentally different treatment systems.

As in the other options, approval of a variance would result in a modification of the national standard for industrial dischargers of the regulated pollutant. However, in Option IV the primary responsibility for enforcement of the modified national standard would continue with EPA or the NPDES State. EPA would reserve the right to object to State approvals of POTW variances. Continued attainment of the approved removal capabilities and any other conditions of approval would be incorporated into the municipal NPDES permit and be enforceable under sections 308 and 309 of the Act.

C. LOCAL COMPLIANCE PROGRAMS

In Option IV, EPA would encourage locally-developed and implemented standards based upon available technologies and POTW inhibition/interference considerations. Local authorities would be encouraged to establish local technology-based limits in industrial waste ordinances, contracts, etc. Section 307(b)(4) of the Act protects the right of any local authority to enforce pretreatment requirements "not in conflict" with Federal standards.

(1) *Incentives for local compliance programs.* EPA would encourage and assist local and State programs with guidance and incentives as described in the ELEMENTS COMMON TO ALL OPTIONS. The contents of the 304(f) guidance would include those items described in ELEMENTS COMMON TO ALL OPTIONS as well as information contained in the development documents used to

establish national pretreatment standards.

(2) *Local program requirements and approvals.* In the interim before compliance with national standards is required, these local pretreatment programs would provide protection against POTW interference and inhibition and pass-through of incompatible pollutants. For some industries (i.e. the third group discussed above), Federal standards would not be promulgated until 1980 or later and compliance may not be required for up to three years.

In the long run, the development of local compliance programs would assist POTW's in complying with the proposed 1983 municipal permit requirement for such programs. The general pretreatment regulations (40 CFR 403) and the 304(f) guidance would define the local pretreatment program which POTW permits would require implementation of by 1983.

These local compliance programs, except to the extent that they are developed using Federal grants and are contained in NPDES municipal permits, would not be subject to EPA or State approval, as described in Option I and section 403.11 of this regulation. Local compliance programs would supplement, but not supplant, NPDES State and Federal enforcement of national standards.

D. ENFORCEMENT

Option IV places primary responsibility for achieving compliance with national pretreatment standards on NPDES States and EPA. The Act clearly indicates that States are to play a major role in enforcement of pretreatment requirements. Section 402(b) () requires NPDES States to have adequate authority "to insure that any industrial user of any publicly owned treatment works will comply with [section] * * * 307 * * *". In addition, pursuant to section 208 of the Act, States are required to insure the establishment of a regulatory program to meet applicable pretreatment requirements.

(1) *State or Federal enforcement.* Under Option IV, NPDES States or EPA, in the absence of an NPDES State, would enforce the national pretreatment requirements, or any modifications granted through industrial and POTW variances, directly against all indirect dischargers regulated by the standards. EPA or the NPDES State would notify all indirect dischargers of the national standards, perform compliance reviews and monitoring as required, and bring enforcement actions when necessary.

Section 308 of the Act is the primary mechanism through which the permitting authority can acquire the information needed to enforce the pretreatment standards from those affected by the standards. With respect to pretreatment, this section provides that the Administrator shall require owners and operators of point sources to maintain records, make reports, install and use monitoring equipment, sample effluent and provide other necessary information. Section 308 gives the Administrator the right to enter premises, have access to records, inspect equipment and methods, and take samples.

The provisions of Section 308 can be applied to the POTW. Given the broad purposes of this section it is clear that the Agency could require monitoring and reporting beyond that needed to ascertain whether or not the treatment works is meeting its own effluent limitations. For example, the POTW could be required to monitor its influent for pollutants which are discharged by industrial users and are subject to pretreatment requirements.

Another way in which section 308 could be used is to apply it directly to users of a POTW; it is clear that Congress intended such use of section 308. The purposes of that section specifically include "developing or assisting in the development of any * * * pretreatment standard * * * [and] determining whether any person is in violation of any such * * * pretreatment standard * * *". As stated by the Conference Committee: "The conferees intend that the monitoring requirements of Section 308 shall apply to industrial users introducing effluents to a publicly owned treatment works." [H. Report No. 92-1465 (Conf. Report) p. 130; see also sections 402(a)(3) and 402(b)(9)].

Section 402(b)(8) provides yet an additional means of obtaining information for the purpose of operating a pretreatment program. The use of this section is discussed in the ELEMENTS COMMON TO ALL OPTIONS.

The Act plainly provides for direct Federal enforcement of pretreatment standards. Section 307(d) provides that operation of a source in violation of pretreatment standards is unlawful and the enforcement mechanisms of section 309 are available to the Agency to prevent or punish such unlawful behavior.

(2) *Monitoring and reporting requirements.* The monitoring requirements of Option IV are as outlined in the ELEMENTS COMMON TO ALL OPTIONS and in Option I, except that no exclusions from reporting requirements would be allowed. If Option IV were selected the proposed general pretreatment regulations would be as shown below except that § 403.12 (b) and (c) would be deleted.

MAJOR ISSUES

All four strategy options attempt to achieve the statutory objectives of preventing interference and pass-through. However, Congress, in establishing these objectives, did not specify either the basis for establishing national pretreatment standards nor how the standards should be enforced. The four strategy options differ significantly in how they resolve these two major issues. A secondary but related difference between the options is the number of pollutants and sources to be regulated by national standards. These major issues deserve public discussion and debate.

A. BASIS FOR PRETREATMENT STANDARDS

The first issue concerns the flexibility to adjust the pretreatment program to local conditions when the national standards are based on control technologies *vs.* water quality considerations. The Agency believes that the purposes of the Act and the intent of Congress would best be served by technology-based pretreatment standards. However, the Agency also believes that Congress, in not explicitly stipulating the basis for pretreatment standards, may have allowed for considerable exercise of administrative discretion to recognize and take into account local conditions, including water quality considerations.

The four strategy options vary significantly in the extent to which industrial users of POTW's would be controlled by Federally-promulgated technology-based standards *vs.* locally-developed and applied pretreatment limits. All four options would result in national technology-based standards. Option I, would apply Federal technology-based standards to most incompatible pollutants discharged by approximately 21 industries but would allow modification of these national standards for documented POTW removal capabilities (designed and incidental). Option II is similar to Option I but it would also authorize variances that would allow POTW's to develop and enforce locally-derived pretreatment limits in lieu of Federal technology-based pretreatment standards provided State Water Quality Standards or section 304(a) water quality criteria are not violated. Option III applies Federal technology-based pretreatment standards to only the most significant sources of toxic and/or hazardous pollutants; all other pollutants and sources would be subject to locally-derived standards. Option IV would establish technology-based standards for 21 or more industries and would recognize local conditions only where the POTW was fundamentally different than assumed in establishing the national standards.

B. TYPE OF ENFORCEMENT PROGRAM

This issue concerns whether EPA should achieve compliance with pretreatment requirements through a direct or an indirect enforcement program. As discussed previously, the Act enables direct Federal enforcement but also strongly encourages State and local efforts that minimize Federal involvement.

A direct enforcement program would require EPA and the NPDES States to continuously enforce directly against industry (notify indirect dischargers, perform compliance reviews and monitoring, enforce significant violations, etc.). Current local pretreatment programs which are generally focused on preventing interference with the POTW's operation would not be affected.

An indirect enforcement program would place the major responsibility for achieving compliance on the local authorities. In this case the local authorities would notify all indirect dischargers,

perform compliance reviews and monitoring, and enforce the standards. EPA and the NPDES States would back-up local enforcement efforts only where requested or needed for water quality reasons.

All four options provide for some direct Federal enforcement against indirect dischargers where there are no approved local compliance programs and/or against local municipal authorities where violations of the POTW's permit occurs. However, the extent and emphasis on Federal and States *vs.* local enforcement varies in the four options. In Options I through III, local authorities have the primary responsibility for ensuring compliance with local and Federal standards, while this responsibility lies with EPA and the NPDES States in Option IV. Options I through III anticipate Federal or State enforcement where back-up for approved local compliance programs is needed, where water quality conditions require, or where local pretreatment programs are not implemented.

Option I would provide for local enforcement of Federal standards (with or without local credits) and local requirements whenever local compliance programs are approved. Enforcement in Option III is similar to Option I, except national standards would apply to only the most significant sources of hazardous pollutants and, thus, local standards would apply to a far larger number of sources. In addition, Option III anticipates Federal or NPDES State enforcement of additional numeric limits or conditions in the POTW's permit where necessary.

Option II would provide for local enforcement of either Federal pretreatment standards or local standards in lieu of Federal standards wherever State Water Quality Standards or section 304 (a) water quality criteria are met.

Option IV would involve EPA or NPDES State enforcement of national standards directly against all Federally-regulated indirect industrial dischargers. Although local compliance programs would be encouraged, they would not supplant direct enforcement by EPA or the States.

C. COVERAGE OF SOURCES AND POLLUTANTS

The four options also differ in terms of the number and type of pollutants covered by national pretreatment standards as well as how many sources of each pollutant would be regulated by these technology-based pretreatment standards. Option IV would establish national standards for 8 industries this year, at least 21 industries within the next three years, and for most, if not all, other industries discharging incompatibles in subsequent years. These standards would cover at least the 65 toxic and most other incompatible pollutants causing inhibition/interference or passing through the POTW. The standards would apply to nearly all indirect sources in each industrial category.

Both Options I and II would establish national standards for 8 industries this year and for up to 21 industries, as appropriate, within three years. These standards would apply to 95 percent of the sources in each industrial category, except perhaps for the electroplating, laundries and machinery industries. In these two options national standards would limit many of the 65 toxic pollutants as well as most other incompatibles. However, Option II can be distinguished from Option I in that it would allow local standards in lieu of Federal standards where local authorities are granted water quality variances.

Option III would establish national standards for the most hazardous pollutants and apply the standards only to the more significant plants in regulated industries. Federal standards would not be established for pollutants that were not hazardous or toxic. This coverage of pollutants may include less than 65 toxic pollutants and would result in Federal regulation of approximately 10–13 industries.

ECONOMIC IMPACT ANALYSIS STATEMENT

Executive Order 11821 (as extended) and OMB Circular A–107 require that major legislative proposals, regulations, and rules by agencies of the Executive Branch be accompanied by a statement certifying that the economic impact of the proposal has been evaluated. EPA's guidelines on Economic Impact Analysis Statements (formerly called Inflation Impact Statements) provide that regulations shall be considered a major action and shall require an Economic Impact Analysis if the incremental annualized costs of compliance, including capital charges, exceed $100 million, the incremental cost of production of any major product exceeds 5 percent of the selling price of the product, net national energy consumption would be increased by the equivalent of 25,000 barrels of oil a day, or the supply or demand of certain specified materials would be affected by more than 3 percent.

The Environmental Protection Agency has determined that this does not constitute a major proposal requiring preparation of an Economic Impact Analysis for the reasons discussed below.

This proposed regulation (40 CFR Part 403) prohibits the introduction of certain wastes into a POTW in a manner similar to the existing general pretreatment regulation (40 CFR Part 128). Most of the prohibited discharge regulations contained herein constitute a technical revision of the previous regulation for the purpose of clarity and ease of understanding, but do not alter any existing pretreatment requirements and hence, should cause no economic impact. The only additional prohibited discharge requirement in this regulation is a prohibition on heat. This prohibition is expected to potentially affect only a limited number, if any, industrial facilities, primarily in the steam electric power industry. Thus, the costs of compliance are expected to be minimal (less than $1 million) and should cause no economic impact.

These proposed regulations do not establish specific numeric pretreatment limitations or requirements for any industrial category. These numeric limitations will be developed on an industrial subcategory basis and proposed and promulgated separately from this regulation. The economic impact of each of these pretreatment regulations will be evaluated at the time each subcategory regulation is prepared and promulgated, regardless of whether each proposal is a major action.

Similarly, the reporting requirements for indirect dischargers contained herein will be applied on an industrial subcategory basis at the time the numerical pretreatment limitations are established and will depend on the definition of "major contributing industry" as applied to each industrial subcategory. The total cost of these reporting requirements is estimated to be less than $100 million and could range from $15 to $85 million. These costs also will be evaluated at the time of proposal and promulgation of the industrial subpart regulations.

The remaining sections of these regulations establish mechanisms and procedures for variances from Federal standards and for the establishment of local compliance programs. These variances and local programs are voluntary and the regulation leaves any decision regarding the use and application of such procdures to the discretion of local authorities.

OPPORTUNITY FOR PUBLIC PARTICIPATION

The Administrator solicits widespread public involvement in all aspects of this pretreatment issue and interested individuals and groups are encouraged to actively participate in this rule-making. In order to assist in the development of objective comments and debate, the Environmental Protection Agency will have available technical documentation, entitled "Information for Proposed General Pretreatment Regulations (40 CFR Part 403)". The document briefly summarizes the environmental problems caused by industrial users of POTW's and the existing institutional capabilities of all levels of government to handle these problems. This documentation includes information on the waste flows and loadings from various industrial categories, the number of industries in each category discharging to POTW's, the percentage of POTW's receiving industrial wastes, typical removal capabilities achieved by municipal treatment systems, the number of States with numeric water quality standards for various incompatible pollutants, and the capabilities and difficulties encountered in existing pretreatment programs by the several levels of government. This document also provides the list of specific industrial subcategories, identified by four-digit SIC number, for the 21 industries and the list of 65 toxic pollutants covered by the NRDC/EDF consent decree. Copies of this document will be made available to the public upon request to the Office of Public Affairs (A–107), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (Attention: Ms. Barbara Paul). The document will be made available for public distribution after February 17, 1977. Requestors should reference "Information for Pro-

posed General Pretreatment Regulations (40 CFR Part 403)".

There are several major issues on which EPA is particularly interested in receiving public comments and relevant data. These fundamental issues are essentially the major differences between the four strategy options and were discussed earlier in the preamble. Further, the public should recognize that although four strategy options are presented, this does not preclude interested parties from offering a modification of one or a combination of two or more for consideration. In evaluating such proposals the Agency will be concerned that substantial environmental clean-up is achieved as quickly as possible and that internal consistency is maintained in any overall pretreatment strategy.

Public hearings on these four proposed strategy options are scheduled as follows:

San Francisco: April 5, 1977
Boston: April 14, 1977
Chicago: April 19, 1977
Washington, D.C.: April 21, 1977

The time and place of these public hearings will be announced in the FEDERAL REGISTER.

Written comments are also encouraged. Interested persons may participate in this process by submitting written comments in triplicate to the Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. (Attention: Mr. Stephen Heare.) All relevant comments received not later than May 3, 1977 will be considered. Comments received will be available for public inspection and copying during normal business hours at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. The EPA Information Regulation, 40 CFR Part 21, provides that a reasonable fee may be charged for copying.

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Order 11821 and OMB Circular A-107.

JOHN QUARLES,
Acting Administrator.

JANUARY 19, 1977.

Title 40 of the Code of Federal Regulations is proposed to be revised by deleting Part 128 and by adding a new part 403 to read as follows:

PART 128—[DELETED]

PART 403—PRETREATMENT STANDARDS FOR EXISTING SOURCES AND FOR NEW SOURCES

GENERAL PROVISIONS

Sec.

403.1 Purpose and applicability.
403.2 Definitions.
403.3 State or local law.
403.4 Pretreatment standards: Prohibited discharges.
403.5 Pretreatment standards: categorical standards; dilution prohibition.
403.6 Pretreatment standards: Industrial variances.
403.7 Municipal pretreatment programs: opportunity for local assumption of pretreatment program.
403.8 Municipal pretreatment programs: allowances for removal of pollutants.
403.9 Municipal pretreatment programs: Program element requirements.
403.10 Municipal pretreatment programs: Contents of program submission.
403.11 Municipal pretreatment programs: Approval procedures.
403.12 Reporting by indirect dischargers.
403.13 Public access to information.

§ 403.1 Purpose and applicability.

The provisions of this part implement sections 208, 301(b)(1)(A)(ii) and (b)(2)(A)(ii), 307 (b) and (c), 308, 402(b)(8) and (9) and 501(a) of the Federal Water Pollution Control Act as amended (Pub. L. 92-500) (the Act). This part shall apply to discharges into publicly owned treatment works (as defined in § 403.2(b)) from existing sources and from new sources. In those States which have National Pollutant Discharge Elimination System (NPDES) programs approved pursuant to section 402 (b) and (c) of the Act, the appropriate State water pollution control agency will have primary responsibility (a) for taking enforcement action against discharges prohibited by § 403.4, (b) for the application and enforcement of categorical pretreatment standards, and (c) for the review, approval or denial, and overview of municipal pretreatment programs in accordance with the procedures specified in § 403.7 to § 403.11. In those States which do not have approved NPDES programs, EPA Regional Administrators shall carry out the above activities.

§ 403.2 Definitions.

For the purposes of this part:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis as set forth in 40 CFR Part 401 shall apply to this part.

(b) The term "publicly owned treatment works" shall mean a treatement works, as defined in section 212(a) of the Act, which is owned by a State or municipality, as defined in section 502 of the Act; *Provided, however,* That sewers which do not convey waste water to a facility which reduces the amount of pollutants or alters the nature of pollutant properties in the waste water by physical, chemical or biological processes, shall not be included within the definition of this term.

(c) The term "indirect discharge" shall mean a discharge of or introduction of pollutants from a source into a publicly owned treatment works.

(d) The term "indirect discharger" shall mean the owner or operator of any source of any indirect discharge.

(e) The term "municipal agency" shall mean the person, board, body, agency or other entity having jurisdiction over indirect discharges to and discharges from publicly owned treatment works.

(f) The term "categorical pretreatment standard" shall mean any pretreatment standard issued by the Administrator pursuant to sections 307 (b) and (c) of the Act which applies to a particular category or classification of indirect discharges.

(g) The term "major contributing industry" shall mean an indirect discharger defined as a major contributing industry in a categorical pretreatment standard.

(h) The term "pretreatment" shall mean the reduction of the amount of pollutants or the alteration of the nature of pollutant properties in waste water prior to discharging such waste water into a publicly owned treatment works, whether such reduction or alteration is obtained by physical, chemical or biological processes, process changes or other means.

(i) The term "State Director" shall mean the chief administrative officer of a State water pollution control agency with an NPDES permit program approved pursuant to section 402 (b) and (c) of the Act. In the event that responsibility for water pollution control and enforcement is divided among two or more State agencies, the term "State Director" means the administrative officer authorized to perform the particular procedure to which reference is made.

(j) The term "Regional Administrator" shall mean the appropriate EPA Regional Administrator. However, when used in sections 403.7 to 403.11 of this part with respect to the review and approval of municipal pretreatment programs in States with NPDES programs approved pursuant to section 402 (b) and (c) of the Act, this term shall mean or include the appropriate State Director.

(k) The term "approved municipal pretreatment program" shall mean a municipal pretreatment program meeting the criteria set forth in § 403.9 and approved by a Regional Administrator or State Director pursuant to § 403.7.

(l) The term "slug discharge" shall mean the release of waste water or any constituents thereof to a publicly owned treatment works such that the average hourly discharge over any period of two hours duration is more than twice the daily average hourly discharge of waste water or the constituents thereof.

§ 403.3 State or local law.

Nothing in this part shall affect any pretreatment standard, requirement or prohibition established by any State or local law not in conflict with any pretreatment standard, requirement or prohibition established under the Act or this part.

§ 403.4 Pretreatment standards: Prohibited discharges.

Pollutants introduced into publicly owned treatment works by any indirect discharger shall not interfere with the operation or performance of the works. Specifically, the following pollutants shall not be introduced into a publicly owned treatment works:

(a) Pollutants which create a fire or explosion hazard in the publicly owned treatment works;

(b) Pollutants which will cause corrosive structural damage to the publicly owned treatment works, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works;

(d) A volume or strength of discharge, released in a slug discharge, of such magnitude as to cause a treatment process upset and subsequent loss of treatment efficiency;

(e) Oxygen demanding pollutants (BOD, etc.) released in a slug discharge of such volume or strength as to cause a treatment process upset and subsequent loss of treatment efficiency; and

(f) Heat in amounts which would inhibit biological activity in a publicly owned treatment works resulting in a treatment process upset and subsequent loss of treatment efficiency, but in no case shall heat be introduced into a publicly owned treatment works in such quantities that the temperature of the influent waters at the treatment plan exceeds 40° C (104° F).

§ 403.5 Pretreatment standards: Categorical standards; dilution prohibited.

(a) Pretreatment standards setting forth quantities or concentrations of pollutants or pollutant properties which may be discharged to a publicly owned treatment works by an indirect discharger shall be established, as appropriate, under the appropriate subpart of 40 CFR Chapter I, Subchapter N. Such standards, unless otherwise specifically provided, shall be in addition to the prohibitions set forth in § 403.4 of this part.

(b) Except as may be otherwise expressly authorized by the State Director, the Regional Administrator, or an applicable categorical pretreatment standard, in no event shall an indirect discharger augment his use of process water or otherwise dilute his discharge as a partial or complete substitute for adequate treatment to achieve compliance with an applicable categorical pretreatment standard.

§ 403.6 Pretreatment standards: industrial variances.

(a) *Definition.* The term "requester" shall mean an indirect discharger or other interested person seeking a variance from an applicable categorical pretreatment standard.

(b) *Requests for variances.* (1) Any indirect discharger or other interested person (including the Regional Administrator or State Director) may request a variance from an applicable categorical pretreatment standard where factors fundamentally different from those considered in the development of the appropriate categorical pretreatment standard (as indicated in the categorical pretreatment standard and its Development Document) exist in relation to the indirect discharger prior to the date of the publication of the categorical pretreatment standard. The requester shall submit a request for a variance and supporting evidence in writing to the appropriate Regional Administrator within ninety days following the promulgation of such categorical pretreatment standard. Requests submitted after the ninety day period will not be considered.

(2) If the indirect discharger is located in a State which has an NPDES program approved pursuant to section 402 of the Act, the requester shall submit his request and supporting evidence to the State Director. The State Director may review the request and, if he finds that fundamentally different factors do not exist, may deny the request and so notify the requester (and the indirect discharger where they are not the same). If the State Director finds that fundamentally different factors may exist he shall forward the request to the Regional Administrator.

(3) The written submission shall: (i) State the name and address of the person making the requests;

(ii) Identify the interest of the requester which is affected by the categorical pretreatment standard for which the, request is made;

(iii) State with particularity the reasons for the request;

(iv) Include detailed supporting evidence indicating whether factors relating to the equipment, facilities, processes employed, or other such factors are different from those considered by the Agency in the development of the applicable categorical pretreatment standard (as indicated in the Development Document).

(v) Include proposed pretreatment standards which, in the judgment of the requester, would fulfill the intention of the Act.

(c) *Deficient requests.* The Regional Administrator or the State Director shall not act upon any submission which does not contain all of the information required in paragraph (b)(3) of this section but shall notify the requester of the deficiency in such submission. The submission will not be considered unless the deficiency is corrected by a reasonable date set by the Regional Administrator or the State Director. If the deficiency is not corrected by such date, or within an extended period granted by the Regional Administrator or State Director, the request shall be denied.

(d) *Regional administrator's preliminary findings.* Upon the receipt and consideration of information (either directly from the requester pursuant to paragraph (b)(1) of this section or from the State Director pursuant to pargraph (b)(2)) of this section which meets the requirements of paragraph (b) of this section, evidence obtained from requests for additional information, and other available information, the Regional Administrator shall make a written finding indicating whether there are factors which are fundamentally different for that facility from those factors specified in the appropriate categorical pretreatment standard and its Development Document. Included in the preliminary finding shall be the Regional Administrator's determination as to whether:

(1) The requester's supportive evidence demonstrates that fundamentally different factors do exist which were not considered in the development of the appropriate categorical pretreatment standard;

(2) Those demonstrated fundamentally different factors have a direct influence on the quantity of pollutants discharged by the indirect discharger; and

(3) Alternative pretreatment standards are appropriate.

(e) *Fundamentally different factors do not exist.* If the Regional Administrator finds that fundamentally different factors do not exist, he shall deny the request and forward a copy of his written preliminary finding to the requester (and to the indirect discharger where they are not the same).

(f) *Fundamentally different factors do exist.* If the Regional Administrator finds that fundamentally different factors do exist (i.e. grant of the request for a variance is recommended to the Administrator), the Regional Administrator shall:

(1) Prepare pretreatment standards for the indirect discharge either more or less stringent than those prescribed by the applicable categorical pretreatment standard to the extent warranted by the demonstrated fundamentally different factors; and

(2) Submit the following to the Administrator for approval: (i) The Regional Administrator's written preliminary findings;

(ii) The Regional Administrator's recommended pretreatment standards;

(iii) The rationale for the adjustment of the pretreatment standards (including the Regional Administrator's reasons for recommending that the variance bc granted and an explanation of how the Regional Administrator's recommended pretreatment standards were derived);

(iv) A summary of the supporting evidence submitted to the Regional Administrator; and

(v) A summary of other available information considered in the development of the recommended pretreatment standards.

(g) Decision of the Administrator. Upon receipt and consideration of the Regional Administrator's recommendation prepared pursuant to paragraph (f) of this section, the Administrator may approve or disapprove such pretreatment standards, specify other pretreatment standards, remand for additional information, or initiate proceedings to revise the respective regulations. The decision of the Administrator shall be sent to the Regional Administrator who shall forward a copy to the requester (and to the indirect discharger where they are not the same) and the State Director.

§ 403.7 Municipal pretreatment programs: Opportunity for local assumption of pretreatment program.

(a) Any municipal agency which (1) has jurisdiction over discharges from a publicly owned treatment works receiv-

ing pollutants from indirect dischargers, (2) which desires to administer its own pretreatment program for discharges into its system, and (3) which has been designated by the Governor of the State pursuant to 40 CFR 130.15 as the management agency which shall implement the pretreatment regulatory program required by 40 CFR 131.11(n)(3)(iii) may submit to the Regional Administrator a description of the program it proposes to establish and administer under local law or ordinance. Such description shall meet the requirements of § 403.10.

(b) Not later than ninety days (or 180 days if the public comment period is extended or a public hearing is held; see § 403.11) after the date on which a municipal agency has submitted a pretreatment program (or revision thereof) pursuant to paragraph (a) of this section, the Regional Administrator shall approve such program, thereby giving the municipal agency primary responsibility for the application and enforcement of pretreatment standards, requirements and prohibitions, unless he determines that the program does not meet the requirements of (1) sections 403.9 and 403.10 and (2) any pretreatment regulation program requirements under section 208(b)(2)(C) of the Act and 40 CFR 131.11(n)(3). If the Regional Administrator so determines, he shall notify the municipal agency of any revisions or modifications necessary to conform to such requirements.

(c) Any municipal pretreatment program approved under this part shall at all times be administered in accordance with the requirements of this part, and all applicable pretreatment standards, requirements, and prohibitions shall be applied and enforced by the municipal agency in accordance with the requirements of this part. Nothing in this part shall be construed to limit the authority of the Regional Administrator to take action pursuant to sections 309 or 504 of the Act or, in the case of the State Director, appropriate State or local law.

(d) Whenever the Regional Administrator determines that a municipal agency is not administering a municipal pretreatment program approved under this section in accordance with the requirements of this section, he shall (1) bring enforcement action, as appropriate, against indirect dischargers, the municipal agency, or both, where the publicly owned treatment works' NPDES permit contains effluent limitations or conditions which, if enforced, will remedy the situation, or (2) notify the municipal agency and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, withdraw approval of such program. The Regional Administrator shall not withdraw approval of any such municipal pretreatment program unless he shall first have notified the municipal agency and all indirect dischargers which discharge into such treatment works, and made public, in writing, the reasons for such withdrawal.

§ 403.8 Municipal pretreatment programs: Allowances for removal of pollutants.

(a) Any municipality with an approved pretreatment program may apply for approval of a variance by which indirect dischargers are granted allowances for specific pollutants. Such allowances shall be based upon the publicly owned treatment works' capability to remove such pollutants. An application for removal allowances may be included in the program submission or submitted from time to time following approval of the program and shall be supported by the following information:

(1) A list of the pollutants for which removal allowances are proposed;

(2) Influent and effluent operation data which indicate on a reliable, consistent basis that the pollutants for which allowances are proposed are removed at predictable levels by the publicly owned treatment works as a result of normal operations.

(3) A list of the industrial categories for which allowances would be granted, including the number of indirect dischargers in each such category and identifying which of the pollutants on the list prepared for paragraph (a)(1) of this section are discharged by each category.

(4) Proposed alternative pretreatment standards for each of the categories identified in paragraph (a)(3) of this section.

(5) Data showing the concentrations and amounts in the municipal sludge of pollutants for which pollutant removal allowances are proposed.

(6) The publicly owned treatments works current methods for disposal of its sludge and a discussion indicating why such disposal methods are environmentally acceptable. If the municipality has any plans for the future changes in its sludge disposal methods such plans shall be identified.

(7) A certification by a Registered Professional Engineer that the removal efficiencies and alternative pretreatment standards have been calculated in accordance with this part and any guidelines, issued under section 304(f) of the Act, for computation of allowances for the removal of pollutants by a publicly owned treatment works.

(b) Following notice, public comment, and review as provided in § 403.11, the Regional Administrator shall, either at the time he approves the municipal pretreatment program or thereafter, approve any alternative pretreatment standards as submitted pursuant to paragraph (a)(4) of this section or as revised by the Regional Administrator where he determines the following:

(1) That when coupled with the removal capabilities identified in paragraph (a)(2) of this section, the alternative pretreatment standards are consistent with any applicable categorical pretreatment standards;

(2) That such allowances, if approved, would not result in a violation of any conditions or limitations in the NPDES permit for the publicly owned treatment works; and

(3) That pollutant characteristics of and disposal methods for the municipality's sludge are environmentally acceptable.

(c) With respect to applications for removal allowances for indirect dischargers submitted by a municipal agency after its pretreatment program has been approved pursuant to this part the Regional Administrator shall review, issue notice of, and receive public comment on such applications in acordance with the procedures specified in § 403.11.

(d) Following approval of any application for removal allowances the municipal agency shall continue to monitor and report on (at such frequencies and over such intervals as may be specified by the Regional Administrator, but in no case less than two times per year) the publicly owned treatment works' removal capabilities for all pollutants for which an allowance was granted.

(e) No removal allowance application submitted to the State Director shall be approved if, during the comment period provided for in the public notice, the Regional Administrator objects in writing to the approval of such application. Pursuant to written agreement similar to that provided in 40 CFR 124.23, the Regional Administrator may waive, in whole or in part, his right to review and object to applications for removal allowances under this section.

(f) If, on the basis on removal capability reports received pursuant to paragraph (d) of this section or other information available to him, the Regional Administrator determines (1) that one or more removal allowances approved for a publicly owned treatment works pursuant to paragraph (b) or (c) of this section no longer meet the requirements of paragraph (b), of this section or (2) that such removal allowances are causing or contributing to a violation of any conditions or limitations contained in the POTW's NPDES permit, he shall notify the municipal agency and, if appropriate corrective action is not taken within a reasonable time, not to exceed sixty days, withdraw approval of such removal allowances. The Regional Administrator shall not withdraw approval of any such removal allowances unless he shall first have notified the municipal agency and all indirect dischargers to whom the removal allowances have been applied, and made public, in writing, the reasons for such withdrawal. Following such notice and withdrawal all indirect dischargers to whom the removal allowances had been applied shall be subject to any applicable categorical pretreatment standards without regard to removal allowances and shall achieve compliance with such standards within such time (not to exceed three years or such lesser period as may be prescribed in the applicable categorical pretreatment standard) as may be specified by the Regional Administrator.

§ 403.9 Municipal pretreatment programs: Program element requirements.

In order to obtain approval pursuant to § 403.7 of this section, a municipal pretreatment program must have the following authorities, program elements and procedures:

(a) A statute, ordinance, contract, agreement, or other authority, enforceable in State or local courts, which authorizes or enables the municipal agency to apply and to enforce the requirements of section 307(b) and (c) of the Act and any applicable regulations thereunder. Such statute, ordinance, contract, agreement, or other authority shall also provide the municipal agency with authority to deny or condition new or increased indirect discharges to th publicly owned treatment works treatment system.

(b) Procedures and the capability for the receipt, evaluation, and investigatory follow-up for possible enforcement or remedial action of all notices and reports required of indirect dischargers including, but not limited to, those required in § 403.12.

(c) Authority, funding, qualified personnel and other resources necessary to carry out inspection and surveillance procedures which will determine, independent of information supplied by indirect dischargers, compliance or noncompliance with applicable pretreatment standards, requirements and prohibitions. Such surveillance and inspection support procedures shall include the following:

(1) A supporting survey program with sufficient capability to make systematic, comprehensive surveys of all sewer lines subject to the municipal agency's authority in order to identify and locate all indirect discharges subject to the municipal agency's pretreatment program. Any compilation, index, or inventory of indirect dischargers shall be made available to the Regional Administrator upon request;

(2) A supporting inspection and surveillance program with sufficient capability for the random sampling and analysis of effluent contributions from indirect dischargers for the purpose of identifying occasional and continuing violations of pretreatment standards, requirements and prohibitions; and

(3) A supporting program for the purpose of following up evidence of violations of pretreatment standards, requirements and prohibitions indicated by reports and notifications evaluated pursuant to § 403.12 (including the notification, made pursuant to § 403.12(j), of an indirect discharge prohibited by § 403.4) or by survey, inspection and surveillance activities in paragraphs (c) (1) and (2) of this section. The taking of samples and other information shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court should the followup indicate a violation of applicable pretreatment standards, requirements, and prohibitions.

(d) Authority (and implementing procedures) for use whenever required to carry out the objectives of the pretreatment program, including the determination whether any person is in violation of any applicable pretreatment standards, requirements or prohibitions, at least as extensive as the authority provided under section 308(a) and 308(b) (relating to inspections, monitoring, entry, and public access to information) of the Act

(e) Such authorities and procedures and such recourse to criminal, civil, or civil injunctive remedies as to ensure compliance with pretreatment standards, requirements and prohibitions and the proper operation of the treatment works.

(1) Procedures which enable the municipal agency to require compliance with pretreatment standards, requirements or prohibitions, any duty to permit or carry out inspection, entry, or monitoring activities, any reporting requirements, or any rules or regulations issued by the municipal agency, either pursuant to orders issued by the municipal agency, court actions, or both;

(2) Procedures which enable the municipal agency to immediately and effectively halt or eliminate any actual or threatened indirect discharge which presents an imminent or substantial endangerment to the health or welfare of persons or to the proper operation of the treatment works;

(3) Procedures which enable the municipal agency to initiate in courts of competent jurisdiction actions to enjoin any threatened or continuing violations of pretreatment standards, requirements or prohibitions;

(4) Procedures which enable representatives of the municipal agency to enter any premises in which an effluent source is located or in which records are required to be kept under the terms or conditions of a permit, contract, ordinance, or other appropriate authority and otherwise to be able to investigate, inspect, or monitor any suspected violations of pretreatment standards, requirements or prohibitions;

(5) Procedures which enable the municipal agency to assess or to recover in court, such civil or criminal fines, penalties, and other relief as may be appropriate for the violation by any person of (i) any pretreatment standards, requirements or prohibitions, (ii) any duty to permit or carry out inspections, entry, or monitoring activities, (iii) any order issued by the municipal agency, (iv) any reporting requirements imposed by the municipal agency, or (v) any rules, regulations or orders issued by the municipal agency.

§ 403.10 Municipal pretreatment programs: Contents of program submission.

The contents of a municipal pretreatment program description shall include at least the following information:

(a) A short description of the municipal pretreatment program and its procedures for implementing pretreatment standards, requirements and prohibitions. In particular, this description should identify the means by which pretreatment standards, requirements and prohibitions will be applied to individual indirect dischargers (for example, by order, permit, letter, ordinance, contract, etc.) and how the municipality intends to ensure compliance with pretreatment standards, requirements and prohibitions and enforce in the event of violation.

(b) A description (including organization charts) of the organization and structure of the municipal agency which will be administering the pretreatment program. If more than one agency is responsible for administration of the pretreatment program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth.

(c) A brief description of the funding and full and part-time manpower responsible for the municipal pretreatment program, including the application of pretreatment standards, requirements and prohibitions to indirect dischargers, compliance monitoring review and activity, and enforcement.

(d) A copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the municipality as authority to conduct the pretreatment program.

§ 403.11 Municipal pretreatment programs: Approval procedures.

(a) Each municipal agency applying for approval for its pretreatment program shall (with the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the pretreatment program if approved) submit to the Regional Administrator three copies of a program description which meets the requirements of § 403.10.

(b) Following receipt of a municipal pretreatment program submission, the Regional Administrator shall promptly examine the form and documentation of such submission for compliance with requirements of § 403.10. Upon a determination that the submission contains all of the documents required by § 403.10, the Regional Administrator shall immediately:

(1) Notify the applying municipal agency in writing that its submission has been received and is under review;

(2) Notify the State in which the publicly owned treatment works is located. If the application is made to the Director of an approved State, the State Director shall notify the appropriate Regional Administrator; and

(3) Issue a public notice of Request for Municipal Pretreatment Program Approval in accordance with § 403.11 (e), (f), and (g).

(c) If the municipal pretreatment program submission does not comply with the requirements of § 403.10, the Regional Administrator shall immediately so notify the applying municipal agency in writing. Such notice shall identify any defects in the submission and advise the municipal agency of the means by which it can comply with the requirements of § 403.10.

(d) The Regional Administrator shall have ninety days from the date of receipt of any submission complying with the requirements of § 403.10 in order to review the municipal pretreatment program. This ninety day review period does not commence if the submission fails to meet the requirements of § 403.10.

(e) The Regional Administrator shall publish a formal notice of Request for Municipal Pretreatment Program Approval in the largest daily newspaper published in the city or municipality making the application, or, if there is no daily newspaper in such city or municipality, in a newspaper of general circulation in the area of the city or municipality.

(f) The contents of the public notice of Request for Municipal Pretreatment Program Approval shall include at least the following:

(1) Name, address, and phone number of the State or EPA Regional Office reviewing the municipal pretreatment program submission;

(2) Name of municipality applying for pretreatment program approval;

(3) A brief description of the municipal pretreatment program submission (including, if requested pursuant to section 403.8 above, a request for pollutant removal allowances) and of the requirements of the Act and these regulations as they relate to the submission;

(4) A statement that the municipal pretreatment program submission is available for public inspection and copying and setting out the location and times where such inspection may be obtained;

(5) A statement that any interested person may comment in writing upon the municipal pretreatment program submission, that any written comments received shall be available to the public for inspection and copying, and that all such comments received within thirty days (or such extended comment period as may be specified in the notice) of the date of the notice shall be considered by the Regional Administrator in making his decision; and

(6) A statement that the Regional Administrator may hold a hearing if there is significant public interest expressed in favor of holding such a hearing.

(g) Copies of the notice of Request for Municipal Pretreatment Program Approval shall be mailed to any person or group upon request.

(h) The Regional Administrator shall ensure that the municipal pretreatment program submission and any comments upon such submission are available to the public for inspection and copying.

(i) The Regional Administrator shall provide a period of not less than thirty days following the date of the public notice during which time interested persons (including, as appropriate, the Regional Administrator and the State Director) may submit their written views on the municipal pretreatment program submission. All written comments submitted during the thirty-day comment period shall be retained by the Regional Administrator and considered in his decision whether or not to approve the municipal pretreatment program. The period for comment may be extended at the discretion of the Regional Administrator.

(j) The Regional Administrator shall provide an opportunity for the applicant, any affected State, any affected interested agency, any affected country, or any interested agency, person or group of persons to request a public hearing with respect to the municipal pretreatment program submission. Any such request for public hearing shall be filed within the thirty-day (or extended) comment period described in § 403.11(i) and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted. The Regional Administrator shall hold a hearing if there is a significant public interest in issues relating to whether or not the program should be approved. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the municipality or geographical area in which the publicly owned treatment works is located.

(k) Public notice of a hearing to consider a municipal pretreatment program submission shall be published in the same newspaper as was notice of the original Request for Municipal Pretreatment Program Approval. Copies of such notice shall be mailed to all known indirect dischargers which discharge into the treatment works, to any person or group upon request and to any persons who received a copy of the original notice. The contents of the public notice of the hearing shall include at least the following:

(1) Name, address, and phone number of the agency holding the public hearing;

(2) Name and address of the municipal agency submitting the application for municipal pretreatment program approval;

(3) A brief reference to the public notice issued for the Request for Municipal Pretreatment Program Approval;

(4) Information regarding the time and location of the hearing;

(5) The purpose of the hearing;

(6) A concise statement of the issues raised by the persons requesting the hearing;

(7) Address and phone number of premises at which interested persons may obtain further information and inspect the municipal pretreatment program submission; and

(8) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(l) The following procedures shall be observed at any hearing to consider a Request for Municipal Pretreatment Program Approval:

(1) The Regional Administrator or his designee shall conduct the hearing as the Presiding Officer;

(2) The Presiding Officer shall conduct the hearing in a manner that permits full and open discussion of any issues involved;

(3) Any person may submit written statements or documents for the record;

(4) The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous oral testimony or if such testimony is not relevant to the decision to approve or require revision of the municipal pretreatment program;

(5) The Presiding Officer may ask questions of witnesses and respond to questions or statements of witnesses;

(6) A transcript of the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator;

(7) The hearing record shall be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing.

(m) If the period for public comment is extended beyond thirty days or if a public hearing is held, the Regional Administrator may have up to an additional ninety days to complete review of the municipal program. In no event, however, shall the time for review of the municipal program exceed a total of 180 days from the date of receipt of the submission meeting the requirements of § 403.10.

(n) No municipal pretreatment program submission shall be approved if, during the comment period provided for in the public notice, the Regional Administrator objects in writing to the approval of such submission. Pursuant to written agreement similar to that provided in 40 CFR 124.23, the Regional Administrator may waive, in whole or in part, his right to review and object to municipal pretreatment program submissions under this section.

(o) As soon as possible following the expiration of the thirty-day comment period and, if held, the five-day period following a public hearing, the Regional Administrator shall review the municipal pretreatment program submission, any comments received with respect to such program submission, and the record of the public hearing, if held. If the program meets the requirements of § 403.9 and if there is no written objection pursuant to paragraph (n) of this section the Regional Administrator shall approve the program and shall immediately notify the municipal agency, the State in which the publicly owned treatment works is located, and the Administrator. The Regional Administrator shall publish notice of each such approval in the FEDERAL REGISTER. The Regional Administrator shall identify with such notice any allowances which the municipal agency may grant to indirect dischargers, in accordance with § 403.8, for removal of pollutants subject to pretreatment requirements. In addition, the notice shall contain a statement that, as further data become available, the Regional Administrator may modify or add to the allowances for pollutant removals which may be granted to indirect dischargers.

§ 403.12 Reporting by indirect dischargers.

(a) Definition. The term "control authorities" shall mean the municipal agency, the State Director of the State in which the indirect discharger is located, and, in the case of a major con-

tributing industry, the Regional Administrator of the Region in which the major contributing industry is located.

(b) Following approval of a municipal pretreatment program pursuant to § 403.7 to § 403.11, the Regional Administrator and/or the State Director, in their discretion, may waive their right to receive some or all of the reports required in this section.

(c) As part of its application for approval of its municipal petreatment program pursuant to § 403.7 to § 403.11, a municipal agency may request, and following approval of its program may assume, responsibility for sampling and analysis of indirect discharges and the preparation of some or all of the pollutant concentration reports required by paragraph (f) of this section.

(d) Initial report: Within one hundred and eighty days (1) after the promulgation of a categorical pretreatment standard or (2) prior to the commencement of a discharge, any indirect dischargers subject to such categorical pretreatment standard shall submit to the control authorities a report which contains the following information:

(i) The name and address of the indirect discharger;

(ii) The location of the indirect discharge(s);

(iii) The nature, rate of production, and Standard Industrial Classification of the operation producing the indirect discharges;

(iv) The average and maximum flow of the indirect discharge, in gallons per day;

(v) The concentration of pollutants in the indirect discharge which are limited by the categorical pretreatment standard;

(vi) A statement, reviewed by and certified to by a Registered Professional Engineer, indicating whether or not additional pretreatment will be required for the indirect discharge to meet the categorical pretreatment standard: and

(vii) If additional pretreatment is required to meet such limitations, the schedule by which indirect discharger will provide such additional pretreatment, the completion date in such schedule to be not later than the effective compliance date established in such categorical pretreatment standard.

(e) Schedule progress reports. The schedule required by paragraph (d)(7) of this section shall contain increments of progress in the form of reasonable dates for the commencement and/or completion of major events leading to the construction and operation of such additional pretreatment as may be required for the indirect discharger to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, etc.). Not later than 14 days following each date in the schedule and the final date for compliance, the indirect discharger shall submit a progress report to the control authorities, including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with such increment of progress, the reason for delay, and the steps being taken by the indirect discharger to return the construction of its required additional pretreatment to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authorities.

(f) Pollutant concentration reports: (1) Within ninety days following final compliance with an applicable categorical pretreatment standard or following the effective date of the categorical pretreatment standard, whichever is earlier, or, in the case of a new source, following commencement of the discharge, any indirect discharger subject to such categorical pretreatment standard shall submit to the control authorities a report indicating the concentration of pollutants in the indirect discharge which are limited by such categorical pretreatment standard. The report shall contain a statement that the indirect discharge is or is not in compliance with the applicable categorical pretreatment standard and shall be reviewed by and certified to by a Registered Professional Engineer.

(2) Any indirect discharger subject to a categorical pretreatment standard, after the effective date of such categorical pretreatment standard, or, in the case of a new source, after commencement of the discharge, shall submit to the control authorities during the months of June and December (or, in the case of a major contributing industry during the months of March, June, September, and December), unless required more frequently in the categorical pretreatment standard or by the control authorities, a report indicating the concentration of pollutants in the indirect discharge which are limited by such categorial pretreatment standard. In their discretion and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authorities may agree to alter the months during which the above reports are to be submitted.

(g) Sampling and analysis: The reports required in paragraphs (d)(5) and (f) of this section shall contain the results of sampling and analysis of the indirect discharge, including the flow and the pollutants contained therein which are limited by the applicable categorical pretreatment standard. All sampling and analysis shall be performed in accordance with test procedures established by the Administrator pursuant to section 304(g) of the Act and contained in 40 CFR Part 136. Unless otherwise required by the control authorities or the applicable categorical pretreatment standard, sampling and analysis shall be

(1) Based on composite samples for three successive operating days (or, in the case of a major contributing industry, for each of the operating days during an operating week) for the reports required in paragraphs (d)(5) and (f)(1) of this section.

(2) Based on composite samples for one operating day during the month preceding the report (or, in the case of a major contributing industry, for one operating day during each of the three months preceding the report) for reports required in paragraph (f)(2) of this section.

(3) A composite sample is a sample composed of equal parts taken during one hour intervals during an operating day. An operating day is that portion of a day during which pollutants are discharged by an indirect source. All samples shall be taken in a manner and at a location which reasonably characterizes the discharge of the monitored pollutants.

(h) Identity of signatories to reports: (1) The reports required by paragraphs (d)(5) and (f)(1) of this section submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the indirect discharge originates. In the case of a partnership or a sole proprietorship the report must be signed by a general partner or the proprietor respectively. In the case of a municipal, Federal or other public facility, the report must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(2) The reports required by paragraph (f)(2) of this section must be signed by a representative of the indirect discharger responsible for the overall operation of the facility from which the indirect discharge originates.

(i) Recording of monitoring results: (1) Any indirect discharger subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses.

(2) Any indirect discharger subject to the reporting requirements established in this section shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records and shall make such records available for inspection and copying by the control authorities. This period of retention shall be extended during the course of any unresolved litigation regarding the indirect discharge of pollutants by the indirect discharger or when requested by the control authorities.

(3) Any municipal agency to which reports are submitted by an indirect dis-

charger pursuant to paragraphs (d) and (f) of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the State Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the indirect discharger or when requested by the State Director or the Regional Administrator.

(j) In addition to the above reporting requirements, any indirect discharger shall, as soon as he has knowledge of any indirect discharge in violation of § 403.4 (prohibited discharges), immediately notify the control authorities of such discharge.

§ 403.13 Public access to information.

Information and data provided by an indirect discharger to the Regional Administrator pursuant to this part, identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted or which may be furnished by an indirect discharger to the Regional Administrator in connection with required periodic reports shall also be available to the public unless the indirect discharger or other interested person specifically identifies and is able to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets. Any requests for confidential treatment of information and for access to such information shall be governed by procedures specfiied in 40 CFR Part 2.

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